

MEETING  
STATE OF CALIFORNIA  
THE RESOURCES AGENCY  
CENTRAL VALLEY FLOOD PROTECTION BOARD  
OPEN SESSION

THE RESOURCES BUILDING  
1416 NINTH STREET  
AUDITORIUM  
SACRAMENTO, CALIFORNIA

THURSDAY, AUGUST 26, 2010

8:39 A.M.

JAMES F. PETERS, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

## APPEARANCES

### BOARD MEMBERS

Mr. Benjamin Carter, President

Mr. Butch Hodgkins, Secretary

Mr. John Brown

Ms. Teri Rie

Ms. Emma Suarez

### STAFF

Mr. Jay Punia, Executive Officer

Mr. Len Marino, Chief Engineer

Mr. Dan Fua, Supervising Engineer

Mr. Ali Porbaha, Supervising Engineer

Mr. Curt Taras, Supervising Engineer

Mr. Eric Butler, Senior Engineer

Mr. Gary Lemon, Staff Engineer

Mr. Joo Chai Wong, Staff Engineer

Mr. John Tice, Staff Engineer

Ms. Lorraine Pendlebury, Staff Analyst

Mr. Amber Woertink, Office Technician

Ms. Deborah Smith, Legal Counsel

APPEARANCES CONTINUED

DEPARTMENT OF WATER RESOURCES

Mr. Ajala Ali, Staff Engineer

Mr. Gary Bardini, Chief, Division of Flood Management

Mr. Stephen Bradley, Chief, Statewide Flood Planning  
Office

Ms. Nancy Finch, Senior Staff Counsel

Mr. John Langston, Flood Projects Office

Mr. David Martasian, Senior Environmental Scientist

Mr. Bob Scarborough

Mr. Ward Tabor, Assistant Chief Counsel

ALSO PRESENT

Mr. Randy Aeschliman

Mr. Omar Al-Hindi, City of Stockton

Mr. Mike Arhcer, MBK Engineers

Ms. Linda Boisa, Equestrian Trail Patrol

Mr. Gregory Brehm, OPDE U.S.

Mr. Chris Campbell, cbec, inc.

Mr. Roger Dickinson, Sacramento County Board of  
Supervisors

Ms. Barbara Eggleston, Equestrian Trail Patrol

Mr. Robert Fagerness, Central Valley Environmental

Mr. Jason Guignard, FISHBIO

Mr. Rick Johnson, Sacramento Area Flood Control Agency

Mr. Guy Kolling, Sacramento County

APPEARANCES CONTINUED

ALSO PRESENT

Mr. David McDaniel, United States Army Corps of Engineers

Ms. Charlea Moore

Ms. Jenni Moser, Dry Creek Parkway Advisory Committee

Ms. Meegan Nagy, United States Army Corps of Engineers

Ms. Tamara Rose

Mr. Tom Scheeler, City of West Sacramento

Mr. Scott Shapiro, Downey Brand

Ms. Marlene Vallee

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PROCEEDINGS

PRESIDENT CARTER: Good morning, ladies and gentlemen. Welcome to the Central Valley Flood Protection Board meeting for August 2010.

Mr. Punia, would you please call the roll.

EXECUTIVE OFFICER PUNIA: Good morning, Jay Punia, Executive Officer, Central Valley Flood Protection Board.

Board Member Teri Rie hasn't yet arrived, but we are expecting that she will join us pretty soon. And Board Member Maureen Doherty, Lady Bug, has resigned from the Board and we will discuss that later on in more details.

The rest of the Board members are present.

PRESIDENT CARTER: Thank you.

So we'll move on to approval of the minutes for June 24 and 25. We had a day and a half meeting that month. Are there any proposed changes to the minutes for June 24 or June 25?

BOARD MEMBER BROWN: I move their adoption, Mr. Chairman.

PRESIDENT CARTER: Okay, we have a motion. Is there a second?

VICE-PRESIDENT HODGKINS: Second.

PRESIDENT CARTER: Any discussion?



1 All right, all those in favor indicate by saying  
2 aye?

3 (Ayes.)

4 PRESIDENT CARTER: And opposed?

5 Motion carries unanimously.

6 We'll move on to the approval of the agenda for  
7 today. Are there any proposed changes to the agenda as  
8 published?

9 Mr. Punia.

10 EXECUTIVE OFFICER PUNIA: Staff is recommending  
11 the following changes to the agenda as published:

12 Item Number 9A, under Consent Calendar, Permit  
13 Number 18414, City of Chico. The applicant has requested  
14 that we should move this item for our September Board  
15 meeting, so staff is recommending to the Board that we  
16 should move Item 9A.

17 And Item number 9C, Permit Number 18483, Aerojet  
18 General Corporation. Staff is recommending that this item  
19 be pulled from Consent to a hearing, because staff has  
20 modified its recommendation.

21 And Item T on the Consent Calendar, T, like Tom,  
22 lower Cache Creek Feasibility Study, Letter of Intent.  
23 There is a typo. It should have been Yolo County, but by  
24 mistake it's listed as Sutter County, so there's a  
25 correction.

1           Those are the changes to the printed agenda.

2           PRESIDENT CARTER:   Okay.   Are there any other  
3 proposed changes to the agenda.

4           Mr. Hodgkins.

5           VICE-PRESIDENT HODGKINS:   I'd like to have 9M --  
6 I believe it's 9M, which is a solar farm adjacent to the  
7 deepwater ship channel moved to a hearing.

8           PRESIDENT CARTER:   Okay, that would be 9M, Permit  
9 Number 18596 in the Port of West Sacramento?

10          VICE-PRESIDENT HODGKINS:   Yes.

11          PRESIDENT CARTER:   Okay, move to a hearing.  
12 Okay, any other proposed changes to the agenda?

13          And, Mr. Punia, just to confirm, the applicant  
14 for 9A for postponement to September is in concurrence  
15 with that change?

16          EXECUTIVE OFFICER PUNIA:   Yes.

17          PRESIDENT CARTER:   Okay.   Any other changes?

18          We'll entertain a motion to approve the agenda as  
19 modified by staff and Board, which includes postponing  
20 Item 9A, moving Items 9C and 9M to hearings today, and a  
21 correction on 9T changing the Sutter County to Yolo County  
22 in the title of that item.

23          Is there a motion?

24          BOARD MEMBER BROWN:   I'll move adoption of the  
25 agenda as revised, Mr. Chairman.

1           PRESIDENT CARTER:   Okay.

2           VICE-PRESIDENT HODGKINS:   Second.

3           PRESIDENT CARTER:   We have a second.

4           Any discussion?

5           All those in favor indicate by saying aye?

6           (Ayes.)

7           PRESIDENT CARTER:   Motion carries unanimously.

8           Thank you.

9           At this point, we have time for public comment.

10          This is the time when we invite the members of the public  
11          to come and address the Board on non-agendized items for  
12          today. We do ask that -- folks that do want to address  
13          the Board, please fill out these cards that are available  
14          at the table in the back of the auditorium, as well as  
15          here up front from Ms. Pendlebury, just so we know to  
16          recognize you.

17                 If you choose to speak on items that are on the  
18          agenda today, please also fill out that card. And when  
19          that item comes before the Board, we will invite you to  
20          address the Board to comment on that item.

21                 So I do not have any cards for public comment.  
22          Are there any members of the public out there that wish to  
23          address the Board on non-agendized items?

24                 Seeing none, we'll move on.

25                 This is Item 5, Election of a Board Officer. As

1 Mr. Punia had announced, our Board Member, Maureen Lady  
2 Bug Doherty has resigned from the Board for personal  
3 reasons. And she was serving as Secretary, has been  
4 serving as Secretary, for several years. And so our  
5 regulations allow for the Board to elect, and actually  
6 state that the Board should elect, a Secretary and have a  
7 Secretary serving.

8 So in the absence of Ms. Doherty, we need to hold  
9 elections for Secretary of the Board.

10 Are there any nominations for Secretary for the  
11 Board?

12 BOARD MEMBER BROWN: I'll nominate Emma Suarez,  
13 Mr. Chairman.

14 PRESIDENT CARTER: Okay, we have a nomination  
15 and --

16 BOARD MEMBER RIE: Second.

17 PRESIDENT CARTER: We have a motion -- or we have  
18 a nomination and a second to that nomination.

19 Ms. Suarez.

20 BOARD MEMBER SUAREZ: I really appreciate the  
21 gesture, but me being the one living in Redding and such a  
22 distance between myself and the office, I just don't think  
23 that might be the best fit. So I would just suggest that  
24 perhaps somebody else would be a better fit.

25 PRESIDENT CARTER: Okay. I didn't hear a denial.

1 (Laughter.)

2 BOARD MEMBER SUAREZ: If nominated, I will not  
3 run and if I elected --

4 (Laughter.)

5 BOARD MEMBER SUAREZ: -- I will not something or  
6 other.

7 (Laughter.)

8 PRESIDENT CARTER: Okay, are there any other  
9 nominations?

10 BOARD MEMBER BROWN: Maybe we should postpone  
11 this, Mr. Chairman, until we discuss it amongst the Board  
12 members a little bit.

13 PRESIDENT CARTER: We can table this until later  
14 this afternoon. That's fine.

15 VICE-PRESIDENT HODGKINS: Well, you know, I might  
16 suggest as an alternative that since I live in Sacramento,  
17 maybe I could serve as Secretary, and we could make Emma  
18 the Vice Chair. We'd have to reagenda that for the next  
19 meeting, but I think that might be a good way to deal with  
20 this. And then, you know, the part of the job of signing  
21 stuff would be easy for staff to deal with, with me being  
22 here in Sacramento.

23 PRESIDENT CARTER: Okay. Well, my reading of the  
24 regulations indicate that the Board needs to have a  
25 Secretary, primarily for formalizing and signing the

1 documents on behalf of the Board. The regulations do not  
2 indicate that we have to have a Vice President of the  
3 Board. So we could -- a possibility today would be if the  
4 Board so chooses, is that we could elect Mr. Hodgkins as  
5 secretary and then agendize a vice chair for the September  
6 meeting. And the Board could continue to do business  
7 without filling the Vice Chair or not having somebody  
8 sitting in the Vice Chair role.

9 I just say that that's an option, and that's a  
10 way for us to move forward if the Board chooses that.

11 BOARD MEMBER RIE: I would like to nominate Butch  
12 Hodgkins for Secretary and Emma Suarez for Vice-President.

13 PRESIDENT CARTER: Okay. And I don't think that  
14 we can take action on the Vice-President today, given the  
15 way our agenda is published. So we would have to agendize  
16 an election for a Vice President for next meeting.

17 VICE-PRESIDENT HODGKINS: Okay. I wonder if it  
18 would be appropriate for me to simply notify the Board  
19 that I'm going to resign as the Vice Chair and seek the  
20 nomination of Secretary. And then the Board can deal with  
21 the Vice Chair at the next meeting, however you so choose.

22 BOARD MEMBER RIE: Okay, I'll withdraw that  
23 motion, and I'll nominate Butch Hodgkins for Secretary.

24 PRESIDENT CARTER: Okay, we have a nomination for  
25 Mr. Hodgkins to serve as Secretary.

1 Any other nominations?

2 Is there a motion to close the nominations?

3 BOARD MEMBER BROWN: I move we close the  
4 nominations and appoint Mr. Butch Hodgkins as Secretary.

5 PRESIDENT CARTER: Okay. So can we have a voice  
6 vote. All those in favor of Mr. Hodgkins serving as  
7 Secretary of the Board indicate by saying aye?

8 (Ayes.)

9 PRESIDENT CARTER: And the motion carries  
10 unanimously.

11 Okay, thank you very much.

12 So we'll go ahead and agendize another election  
13 for next month. Very good.

14 At this point, we have Item 6 is a ceremonial  
15 matter. This is a presentation of an honorary resolution.  
16 This is an honorary resolution to our former Board Member  
17 Lady Bug Doherty.

18 Are there any members of Lady Bug's family  
19 present today?

20 Well, I'm going to go ahead and do this in Lady  
21 Bug's absence. And then we will be sure that she and her  
22 family get this. But we have a Resolution 10-38. It's  
23 from the State of California, Natural Resources Agency,  
24 Central Valley Flood Protection Board. And I'll go ahead  
25 read the resolution.

1           "Whereas, Ms. Maureen "Lady Bug" Doherty has  
2 resigned as Board member of the Central Valley  
3 Flood Protection Board on July 31st, 2010, after  
4 five years of serving with honor and distinction;  
5 and,

6           "Whereas, Ms. Doherty served as Secretary of  
7 the Board since July 21 of 2006, representing the  
8 Board in a signatory capacity on Board-approved  
9 project agreements, between the Central Valley  
10 Flood Protection Board and the U.S. Army Corps of  
11 Engineers, as well as between the Board and local  
12 government agencies; and,

13           "Whereas, Ms. Doherty helped navigate the  
14 Board through a period of transition following  
15 the Board's legislative acquisition of new  
16 authorities and responsibilities; and,

17           "Whereas, Ms. Doherty worked tirelessly with  
18 federal, State, and local entities to make sure  
19 flood water conveyance systems, such as the  
20 Tisdale Weir, Sutter Bypass function properly to  
21 protect communities from catastrophic floods;  
22 and,

23           "Whereas, Ms. Doherty's leadership,  
24 initiative, expertise, and trail-blazing...", a  
25 word she would particularly like, "...in all



1 aspects of her life, resulted in Lady Bug having  
2 a long distinguished career as a teacher in high  
3 schools and colleges, serving on the Maxwell and  
4 California School Board, serving as President of  
5 the California Cattlemen's Association, and  
6 becoming a leader in California's agricultural  
7 community; and,

8 "Whereas, Ms. Doherty's tireless advocacy for  
9 public safety has earned her the trust, respect,  
10 and friendship of her fellow Board members,  
11 staff, and the public; and,

12 "Whereas, as Mr. Doherty's good humor,  
13 personal touch, sincerity, and humanity has made  
14 her an instrumental member of the Board and a  
15 favorite of all.

16 "Now therefore, be it hereby resolved, that  
17 we extend Ms. Doherty our highest commendation  
18 and our most sincere appreciation for her  
19 services on behalf of the Central Valley Flood  
20 Protection Board, the property owners protected  
21 by the system of flood protection under the  
22 Board's jurisdiction, and the citizens of the  
23 State of California; and,

24 "Be it further resolved, that the Board  
25 extends its most sincere wishes to Ms. Doherty as

1 she continues on with her personal endeavors;  
2 and,

3 "Be it further resolved, that this resolution  
4 be engrossed in the official minutes of the  
5 Board, and a suitable copy provided to Ms.  
6 Maureen, "Lady Bug" Doherty."

7 And it will be signed by myself, and Mr.  
8 Hodgkins, Secretary of the Board.

9 So I know that we -- all of us will miss Lady  
10 Bug. She provided a special perspective to our work here  
11 at the Board, as well as being a friend to us all. So we  
12 will miss her very much, and we do wish her very, very  
13 well as she continues on and moves through her new  
14 challenges that she has ahead of her.

15 So we want to thank her very, very much.

16 Mr. Punia.

17 EXECUTIVE OFFICER PUNIA: Jay Punia.

18 Just on behalf of the staff, I want to say on the  
19 record that she earned the respect of the staff, and she  
20 developed a very close working relationship with the  
21 staff. And we enjoyed working with her and wish her best  
22 of luck and speedy recovery.

23 PRESIDENT CARTER: Very good.

24 All right. Ladies and gentlemen, we'll move on  
25 to Item 7, this is the Report of the Activities of the

1 Department Water Resources. Mr. Bardini, good morning and  
2 welcome.

3 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

4 Gary Bardini, Division of Flood Management, Water  
5 Resources.

6 President Carter, Secretary Hodgkins, and Members  
7 of the Central Valley Flood Protection Board, I'd like to  
8 kind of give an update of the activities of the Department  
9 of Water Resources.

10 Kind of start first with kind of where we're at  
11 from water conditions perspective. And I think we can  
12 kind of talk about this year from water conditions was an  
13 average year, as a whole. Precipitation was just slightly  
14 above average. Runoff just slightly below average, and  
15 that's because of the antecedent dry conditions of the  
16 last three years.

17 Storage is about average. Unimpaired runoff of  
18 the Sacramento was a little bit below at about 85 percent.  
19 But the precipitation index both in the northern Sierra  
20 and southern Sierra were at above average. So for the  
21 most part, it was the recovery year for water conditions.  
22 So therefore, we won't have the incidental flood storage  
23 that we've had in the previous years. So if we do have  
24 high-water events next year, we can expect to see water in  
25 the rivers sooner than we normally would, than the last

1 few. So that's kind of leading into the water year or to  
2 the flood season.

3 Moving to our real-time conditions and status. I  
4 think the big thing is our inspection programs for the  
5 spring have been completed. We're now working on the  
6 channel and structures inspections.

7 And then I think the big thing is that we've been  
8 strengthening the program over a number of years. The  
9 Corps of Engineers also has been providing much more  
10 significant oversight over how we've been doing  
11 inspections. And we again are going to hold another set  
12 of workshops with the LMAs coming into the fall inspection  
13 season, something that staff is working on. So we'll keep  
14 you posted.

15 Moving to Emergency Operations. We're now  
16 getting ready for the heavy season. There's significant  
17 activities, in terms of our SEMS, Standardized Emergency  
18 Management training across the organization, organizing  
19 exercises, and starting our normal pre-season  
20 conditions -- or our pre-season coordination meetings.

21 And again, we give a full update as the season  
22 comes in later of the year with the Board. But, you know,  
23 essentially Stockton, Yuba City, Sacramento, Ventura,  
24 Riverside, L.A. County, San Francisco a number of areas,  
25 part of the pre-coordinations from the Flood Operations

1 Center in the Department's Emergency Operations folks  
2 working with local jurisdictions. So those activities are  
3 being organized.

4 Moving on our O&M side a couple things. We're  
5 still progressing on a setback levee construction in West  
6 Sacramento. There's also a number of activities right now  
7 to look at reinitiating the critical erosion repair  
8 programs that we've had. And again, this is something  
9 that's been -- I'm going to talk a little bit more later  
10 at the end on the Roundtable.

11 But again, we're being plagued on some  
12 implementation issues to address them. And I'll kind of  
13 give you an update, one that many folks on the Board have  
14 been working with us.

15 On our Flood Risk Management side, I think the  
16 real thing I'd like to highlight here is that we're close  
17 to completing and getting acquisition and made available  
18 to the public all the topographic information, LiDAR  
19 information from that effort. And activities now in  
20 developing the hydraulic models is now beginning or has  
21 been going on, but we'll continue.

22 And then I think the big thing that -- to note is  
23 that in September, October, in that time period, we'll  
24 send out the first set of risk notifications to folks  
25 based on legislation as required. We'll be sending out a

1 flier and a letter out to probably about, I think it's in  
2 the neighborhood of 350,000 people in population over the  
3 flood risks.

4 And so it's something that the next time on our  
5 next briefing, I'll give you a full update on where we're  
6 at. And I'd like to have it in your packet the actual  
7 brochures that are going out. This is one that's been --  
8 we've had communication experts. We've vetted it to test  
9 groups. And we have tweaked this thing over the last four  
10 or five months trying to do the best first attempt at  
11 providing risk notification to people that are protected  
12 by the flood control system.

13 So moving over to the projects. I think you're  
14 going to get a fair amount on the consent on Folsom and  
15 Cache, and I'll leave that to staff. But I think the big  
16 thing to highlight is two major things.

17 Later next month, we'll have a chance to go and  
18 talk about the Folsom project and doing the interim GRR  
19 or, what we call, the Post Authorization Change Report, in  
20 D.C. So we'll be trying to advocate that project to the  
21 Corps of Engineers.

22 And then, of course, a lot of the hard work that  
23 we've talked about last month has continued to progress on  
24 the Marysville Ring Levee. And I think get ready  
25 September sometime, we're hoping that we'll be able to

1 have the actual ceremony out in Marysville on that  
2 project, something that I know is being organized with  
3 Yuba County Water Agency and the locals there.

4 So we're on track. It looks like the  
5 pre-construction meeting is set now for September 9th.  
6 And the hard work of both the Board and the staff and  
7 locals seems to come -- looks like we're close to getting  
8 to the finish line. So we'll see the light at the end of  
9 the tunnel. Hopefully, it's not a train.

10 PRESIDENT CARTER: Isn't that groundbreaking  
11 scheduled?

12 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

13 I think it has been scheduled. I don't have the  
14 date, but it would -- I think it has been or I know it's  
15 in the works. It's in September.

16 EXECUTIVE OFFICER PUNIA: Yeah, I don't have that  
17 date handy. It has been scheduled.

18 PRESIDENT CARTER: So what we'll do is we'll -- I  
19 want to be sure that all Board members have an invitation  
20 to that. I got a heads up from Mr. --

21 EXECUTIVE OFFICER PUNIA: Curt Aikens.

22 PRESIDENT CARTER: -- Curt Aikens. And so we'll  
23 be sure that everybody knows when that is, so that if you  
24 have an opportunity to attend, please do.

25 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

1           Yeah. And this is just on our side, I think  
2 Director Cowin is trying to make that one. So I think  
3 we'll have representation from the highest levels of our  
4 Department, Water Resources.

5           Moving then to the Delta projects. Again, we've  
6 kind of gone over the processing of claims that are kind  
7 of backlogged because of cash flow issues. And I'll give  
8 you a cash flow update, which we finally have good news at  
9 the end of my update.

10           But again, we have about 60 to 65 or so  
11 agreements that are basically in the process of being  
12 executed. And if we can get the cash flow, which is  
13 pending now, then we'll be able to execute and progress  
14 the work in the Delta. So I think a lot of good news  
15 that's finally coming out.

16           Again, our engineering valuation work as we've  
17 talked about is progressing. I think the big effort there  
18 again is to the flood system status report. We've talked  
19 about it. We'll get a little bit more update. I'm going  
20 to ask Steve Bradley, who's acting for Jeremy Arrich to  
21 give a quick update on the planning.

22           I was nice enough to let Jeremy have the vacation  
23 for the week --

24           (Laughter.)

25           DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:



1 But we'll deserved.

2 PRESIDENT CARTER: Well, didn't he let you have  
3 vacation earlier.

4 (Laughter.)

5 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

6 Yes, exactly. We have to negotiate.

7 But anyway, we're going to give you a quick  
8 update. And I'll probably give you a full update with  
9 Jeremy on the activities next month, in terms of where  
10 they're at in the closure of the Phase 2 process and  
11 moving of the Phase 3. So we're getting down to the more  
12 definitive level of the planning. And it's something that  
13 we've all been trying to wait to see kind of more of the  
14 beef put around it.

15 SECRETARY HODGKINS: Gary, you may be the wrong  
16 person to ask this to, but I've been watching the graph on  
17 the ULE -- or the table, and the NULE. And the ULE, the  
18 Urban Levees, is not moving. It's been 73 percent for six  
19 months. Whereas, the Non-Urban Levees is moving. Can you  
20 explain that?

21 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

22 Well, yeah, I've noticed the same trends, and I  
23 think the -- I'm concerned about the updates as being  
24 accurate too. What it is -- I think a little bit of it is  
25 that the staff has been kind of reoriented towards

1 progressing that, but to package that information into the  
2 Flood System Status Report.

3 And there's been a bit of rescoping of how the  
4 information is being presented for the urban evaluations  
5 to be consistent to what's done in the non-urban  
6 evaluation to go in the Flood System Status Report.

7 So right now, there's been a rescoping a little  
8 bit of the activities there. So that I do know.

9 But I still expect that there's been progression  
10 on some of the work in the investigation. So my sense is  
11 I can get back to you next month and give you the most  
12 accurate update of where they're at, because it's also  
13 been one I've questioned.

14 But we have been regearing the program a bit to  
15 basically feed that information more definitively in  
16 summary, to help support the planning effort. And that's  
17 been a lot of the program activity of recent. And that  
18 has been a bit of rescoping of the activities of the  
19 program right now.

20 But good catch. So you are reading them.

21 SECRETARY HODGKINS: Partly.

22 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

23 The next part of the planning, I'm going to go  
24 ahead and defer most of this to let Steve provide it, but  
25 I think, you know, the crux of it is, that I think there's

1 two substantive documents that the Board can expect at the  
2 end of the year, that I think are the two to keep your  
3 eyes on.

4 One is the Flood System Status Report, which we  
5 talked about, which is a good characterization of where  
6 our problems lie, and the most comprehensive. And so a  
7 lot of our efforts right now has been regearing the  
8 programs. They've been doing a lot of data collection  
9 coming from all sides. But we're pulling it all together  
10 so it can feed the foundation of what the problem is,  
11 which is what you need to build from for doing the  
12 planning effort.

13 So that's what we've been doing. And that's  
14 going to be a significant document. And it's one that's  
15 going to be, I think, telling for a lot of folks. And  
16 there's going to have to be a lot of prep work, in terms  
17 of, I think even coordinating that among a number of  
18 entities as we get closer to pulling that together. So I  
19 would stand by on that one.

20 The second one is where by legislation, and you  
21 see in the Gantt Charts, is to have a progress report.  
22 And a progress report is due at the end of the year. And  
23 I think in this progress report I think we'll be able to  
24 shape more definitively what exactly we should be  
25 delivering in the plan, where we're going with it, a lot

1 of the expectations that we think to -- that we're able to  
2 achieve or going to be able to do will be identified and  
3 kind of where we're at, in terms of the process to date  
4 and what we've -- you know, where we're at in that  
5 milestone, which is really a culmination of the Phase 1,  
6 Phase 2 work.

7           So I think it will be a substantive document  
8 that's going to help shed a lot more light for a lot of  
9 folks. And so that's something to also keep your eyes on,  
10 so those will be two documents that the Board can expect  
11 to see at the end of the year.

12           I'm going to move to then the legislation side  
13 and our communications. And I think a couple things. One  
14 is on the legislation side is again we've been doing a lot  
15 of work with the Senate Committee of Environmental Public  
16 Works. And Rod Mayer, my colleague, has been working --  
17 representing the National Committee on Levee Safety. So  
18 again, we're championing the issues and how to  
19 appropriately deal with levee safety at a national level.  
20 And so there's been a number of efforts on the part of Rod  
21 to do that.

22           The second thing I'd like to talk about is the  
23 funding. Like I told you, we had good news. As of  
24 yesterday, we finally received our allocation of cash flow  
25 from bond sales that have occurred in the fall, and in the

1 spring here. And the good news it looks like our  
2 allocations should be able to meet our full needs now.  
3 And so I expect to see progress. So hopefully the  
4 percentages will go up on our activities, because one of  
5 the things that I can't tell on our Board report is what's  
6 holding things up, if it's a rescoping or it's a cash flow  
7 issue on the programs or our ability to execute contracts.

8 So there's a number of things that have been  
9 forestalling the activities of it and sorting through  
10 that. And, of course, furlough days have not helped also.  
11 So it's been a combination of things that have plagued our  
12 ability, but it looks like the cash flow has now been  
13 resolved, and I expect to see significant progress made on  
14 a lot of programs.

15 BOARD MEMBER SUAREZ: Yes, Mr. Bardini, if I may.  
16 During the hearing that you make reference with Senator  
17 Wolk, there was a discussion regarding the subventions  
18 program, and the problems with getting money down to the  
19 ground. Can you -- is that related to the issue that  
20 you're discussing now?

21 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

22 It is. Yeah, that program and a number of  
23 programs. The levee evaluations has also been plagued.  
24 Probably almost every program other than the critical,  
25 in-the-ground projects. So when we looked at our cash

1 flow, the prioritization where projects that were actually  
2 in the works, so EIP projects, some of the ones that we've  
3 been talking about earlier, have been really the  
4 priorities, because they're actually ready to go on the  
5 ground. And so the cash flow, we almost made that as the  
6 key priority, what we would call the exempt projects, when  
7 we went through the first go around of lists, in terms of  
8 prioritization of cash flow.

9           And then a number of other programs were kind of  
10 on the second tier. And the Delta program, subventions,  
11 along with a whole host of other programs, levee  
12 evaluations were basically kind of on the second level.  
13 And essentially that had slowed down the contracting. And  
14 the bad thing about some of this, and a little bit on the  
15 subventions, but more importantly on other programs, even  
16 though the cash flow gets delayed, that's not the full  
17 impact, because a lot of times our contractors move on to  
18 other work. So trying to get everybody back on the jobs  
19 is also another -- you know, adds to the delay.

20           So one of the things we're having to do is try to  
21 okay we've got our money lined up. Now, we're trying to  
22 get the teams back together and progress it. The case of  
23 the subventions program, you know, we're down to where  
24 we're in backlog issues from the previous years. And  
25 then, of course, locals are trying to generate their

1 portion of money.

2           So it's going to take awhile to kind of, as I  
3 call it, undo the hairball that's been created, because of  
4 the cash flow problem, but they've all been impacted.

5           Moving on to the last part, I'd like to talk a  
6 little bit about the Roundtable meeting, which we held  
7 last week. And I think this meeting was probably a bit of  
8 a surprise, I think, at least on my regard, is essentially  
9 what we were told is that you all know there was a PGL,  
10 which was essentially the policy guidance letter on how  
11 the variance process would be obtained for vegetation.

12           And, you know, the Department submitted, and so  
13 has the Board submitted, comments to a registry. And what  
14 we were notified is that across the country 450 entities  
15 across the State -- or the country responded with concerns  
16 over this policy.

17           And unfortunately, we were told by the Corps, we  
18 had representatives James Dalton under safety along with  
19 Ed Hecker, with their Dam Safety Programs and Levee Safety  
20 Program, at Headquarters, had told and notified us that  
21 the 450 comments would not be shared and made available  
22 for us to read.

23           And then they essentially categorized narrowly,  
24 in my view, what the basic comments were into four  
25 categories, which I know from the comments that the

1 Department of Water Resources, I felt characterizing it to  
2 that was probably not a full proper depiction of our  
3 concerns related to this policy.

4 And so essentially, despite our efforts to work  
5 with the Roundtable and deal with the policy issues and  
6 the implications on the flood control system, it appears  
7 that we've got some work to still do with the Corps of  
8 Engineers.

9 And so we're in discussions now about what proper  
10 next steps might be made, one that certainly we'll be  
11 working with the Board specifically. And right now, we're  
12 trying to decide what's the best way to go about this.

13 So in summary, I'd probably give you just what I  
14 think the major considerations are here. One is is  
15 because of this policy, we are progressively having  
16 difficulty on implementation of both our flood improvement  
17 projects, based on getting through process, and Our repair  
18 programs. And so this policy has had a major impact.

19 The second one is is that we see from the PGL  
20 process that the ability to get -- and I would say get  
21 through a regional variance, there's almost no ability to  
22 even get a regional variance in our view. And we  
23 certainly don't see the legacy issues of our system  
24 allowing us to recognize that and allow us to work through  
25 that.



1           The third thing is we feel that the transparency  
2 of that process is not what we would like to see, in terms  
3 of how we would shape a policy that does work. In the  
4 view of the Department, we think that recognition of what  
5 is necessary to go through a variance process for an  
6 accredited levee for urban protection versus what we want  
7 to do to maintain PL 84-99 eligibility in rural areas. I  
8 think we should have some differences about how that  
9 process might go to meet those needs.

10           And then lastly, I think our biggest concern is  
11 that I think there's a view of the Corps that the Central  
12 Valley Flood Protection Plan is supposed to work through,  
13 what I would call, a scorched earth alternative, in terms  
14 of how the flood control system would look.

15           I think that's one that the Department would not  
16 support. I think we've been clear in the framework that  
17 we would see a lifecycle approach to deal with vegetation  
18 management, which would take a very long time to do, but  
19 to try to go and strip vegetation in a two-, three-year  
20 period across an entire system is not, in our view,  
21 something that would be doable, particularly with the  
22 environmental protection and all the laws that we would  
23 have.

24           So we have great concerns about this. I think  
25 we'll again work with the Board on this. But this is

1 something that we'll have to go back and talk. So I kind  
2 of hate to leave it on a bad note, but I think this is one  
3 to really bring to the attention of the Board.

4 And I'd be, at that point, happy to take any  
5 other questions.

6 BOARD MEMBER RIE: Question.

7 PRESIDENT CARTER: If I might just add to Mr.  
8 Bardini's description. There's clearly a different  
9 interpretation of what the framework or the intent of the  
10 framework from the Corps' perspective, and I would say the  
11 majority, if not all, of the other Roundtable  
12 participants.

13 And one of the major disconnects is with respect  
14 to the legacy vegetation and the application of the  
15 interim vege variance, and the application of essentially  
16 the framework. What did the framework actually cover from  
17 a standpoint of, what I call, essentially some of the  
18 vegetation gets a bye, until the Central Valley Flood  
19 Protection Plan is adopted by this Board in 2012,

20 And instead of being managed according to the  
21 engineer technical letter or the Corps standard, it is  
22 managed to the State's interim vegetation standards, which  
23 is articulated within the framework document.

24 The best example of that is the SAFCA application  
25 for a variance, where they were asked to apply for a

1 variance on some vegetation, which I personally considered  
2 legacy vegetation, and not -- and covered by the  
3 framework. And it was a surprise to me the explanation we  
4 got from the Corps Headquarters folks was that, in fact,  
5 even though those weren't necessarily new projects, which  
6 is how it's described in the framework, that if you're  
7 building a new levee or you're doing a major modification  
8 to a levee, you will execute that project in accordance  
9 with the Corps standard, the engineering technical letter.  
10 But if you're doing repairs to existing levees, then the  
11 framework covers the vegetation on the levee.

12 Well, they said, well, these improvements that  
13 are going on in the Natomas Levee Improvement Program are  
14 intended to be long-term fixes, and therefore they need to  
15 be compliant with the ETL, which was not, in my opinion or  
16 in, as I say, most of the Roundtable participants'  
17 opinion, the intent of the framework.

18 So the bottom line is that the framework, in  
19 reality, on most of our EIP projects and whatnot is not  
20 doing what it was intended to do, and is not being  
21 interpreted the way it was intended to be -- the way it  
22 was written and adopted by the Corps.

23 And so we have some pretty significant work to do  
24 with the Corps on this and their interpretation. And it's  
25 primarily -- it's the Corps Headquarters quite honestly.

1 And the Sacramento District is executing the Headquarters'  
2 will.

3 But it's -- I mean, Gary and folks in DWR have  
4 had struggles with -- and the local maintaining agency,  
5 have struggles with, you know, the interpretation of the  
6 Roundtable or the framework. And I had never gotten an  
7 explanation up until last week, when we had the meeting as  
8 to why they were interpreting it that way.

9 And quite honestly, it did not make any sense to  
10 me at all, and it was completely inconsistent with the  
11 intent and spirit of the framework. So that was a big  
12 disappointment.

13 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

14 So kind of steps moving forward, and I think  
15 President Carter's comments are completely accurate, in my  
16 view. So steps in moving forward is that I think we're  
17 going to have discussions on how to elevate our concerns,  
18 just what President Carter described. And so those  
19 discussions are in there. We recognize, just in simple,  
20 the Corps did say they'd like to progress and release  
21 their next revision of their PGL, Policy Guidance Letter.  
22 They would like to do that in the October timeframe. We  
23 don't know if that's going to hold. We certainly would  
24 like them to -- you know, I would say make significant  
25 changes to that, based on our original comments.

1           And two, we think it should much more transparent  
2 with seeing these comments. I think I also want to note  
3 that our colleagues in the northwest and actually Corps  
4 Division Chief there, you remember McMahon, General  
5 McMahon, who's now up in the Northwest -- he was in the  
6 Southwest Division -- issued a joint letter echoing pretty  
7 much the same concerns that we've had with the head of  
8 both the National Marine Fisheries and U.S. Fish and  
9 Wildlife Service.

10           And the Northwest has the same issues. We know  
11 that there are other issues. Obviously, 450 letters did  
12 go across the country over this. Certainly, we're  
13 interested in understanding what's happening on a national  
14 level with this. And we recognize that we're definitely  
15 unique because of the nature of our system and the legacy,  
16 but there are issues elsewhere.

17           So again, we're going to do our best to get the  
18 transparency opened up and certainly work with others.  
19 Western states, I think we're going to have to talk in  
20 much more -- to talk at a national level on this.

21           And then lastly, what we foresee is -- besides  
22 the efforts of communicating that as we've talked about  
23 and we're trying to restrengthen how the Roundtable is  
24 functioning. So this is one that we did have an action  
25 item to work with a small group with the Board, with the

1 Department with the Corps and with the resource agencies  
2 to see how do we make the roundtable a more effective body  
3 to help address some of the issues I've just described.

4 So there's an effort to try to do that. And  
5 we'll see how that kind of transpires. So that's kind of  
6 it.

7 BOARD MEMBER RIE: Question.

8 PRESIDENT CARTER: Go ahead.

9 BOARD MEMBER RIE: Mr. Bardini, you said a little  
10 while ago that the Corps was unwilling to give you copies  
11 of the those letters?

12 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:  
13 That's correct.

14 BOARD MEMBER RIE: But aren't those public  
15 documents?

16 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:  
17 That's our perception.

18 BOARD MEMBER RIE: Are you going to submit a FOIA  
19 request?

20 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:  
21 That is very likely.

22 (Laughter.)

23 BOARD MEMBER RIE: Okay. Should the Board also  
24 submit a FOIA request?

25 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

1           I think it's something we can coordinate between  
2 us and the Board how to do that.

3           BOARD MEMBER RIE: President Carter, I think that  
4 we should go ahead and do, because this policy is going to  
5 have significant impacts on our Board and the levees.  
6 And, you know, we need to have some transparency, and we  
7 need to potentially coordinate with the other entities or  
8 agencies that also have concerns.

9           PRESIDENT CARTER: I think that's wise. Just so  
10 you know, the Corps did get an earful during the  
11 Roundtable about their -- they were questioned about the  
12 process by which they're finalizing their response to the  
13 comments to the PGL. And several members of the  
14 Roundtable expressed, myself -- I initiated the  
15 discussion, expressed concern about the fact that their  
16 process was not proceeding the way they had represented it  
17 to us back in May when we met, and was not the open  
18 process that we had discussed as a group, and is not in  
19 the spirit of the collaboration that the Roundtable was  
20 working.

21           So again, there were a couple of folks, namely  
22 James Dalton, who's office is really responsible for  
23 developing the engineering technical letters and  
24 administering the PGL process, as well as a gentleman who  
25 worked for him, Eric Halpin, they were there and attended

1 in person for the first time. I think it was a good  
2 experience for us all. And we intend to follow up.

3 And actually Mr. Dalton committed to remain  
4 engaged. And there was supposed to be a meeting this week  
5 between Mr. Dalton and folks from SAFCA, as well as the  
6 Department with respect to the vege variance application  
7 and how that went, and some of the concerns, and  
8 specifically some of the concerns that I raised with  
9 respect to the legacy vegetation. I don't know if that  
10 happened this week or not. It was supposed to happen.

11 EXECUTIVE OFFICER PUNIA: It has been scheduled  
12 for tomorrow, a conference call with Mr. James Dalton from  
13 1:30 to 3:00.

14 PRESIDENT CARTER: All right. Well, I'll call  
15 Stein. I'd like to listen in on that.

16 EXECUTIVE OFFICER PUNIA: Yeah, I think they sent  
17 us the conference line. I will send it to you, the  
18 invitation.

19 PRESIDENT CARTER: Okay, great.

20 BOARD MEMBER SUAREZ: Mr. President.

21 PRESIDENT CARTER: Yes.

22 BOARD MEMBER SUAREZ: Mr. Bardini, I have two  
23 questions or points. And actually, one of them is  
24 directed to you and to our Board and counsel.

25 My understanding is that the Center for



1 Biological Diversity has sent a letter to the federal  
2 government giving them notice that they intend to sue  
3 under the Endangered Species Act over this policy.

4 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

5 That's correct.

6 BOARD MEMBER SUAREZ: And I would like this Board  
7 to consider, perhaps in the future, if they do file that  
8 lawsuit, whether the appropriateness of this Board or  
9 maybe coordinate with the Department, filing a friend of  
10 the court brief, not necessarily in support of the  
11 litigation, but perhaps presenting -- articulating some of  
12 the issues that we have to face if we're forced into  
13 trying to administer a policy that seems to be perhaps in  
14 violation of federal and State environmental protections,  
15 but also problematic for our partners at the local level.

16 So that's something that I'd like to put on the  
17 table. And Ms. Smith, perhaps in the future, you can  
18 think about it and give us some advice on that matter on  
19 the legal side. And then, of course, we'll have to have  
20 the policy discussion, whether that's the right thing for  
21 us to do.

22 Then the second thing, Mr. Bardini, is my  
23 understanding the Legislature ends -- completes its  
24 session coming here pretty quickly, I think by, next week?

25 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

1           Um-hmm.

2           BOARD MEMBER SUAREZ:   And I was wondering if, at  
3   some point in the next two months, we can get a briefing  
4   of some of the key legislative initiatives that made it  
5   through that are of impact perhaps or of interest to this  
6   Board. We kind of rely on your legislative office for  
7   some of that.

8           DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

9           We would be happy to do that. One that we've  
10   been following is SB 991 a Wolk bill that is related to  
11   the Delta itself.

12          But we'd be happy to do that. There's been a  
13   number of other things that we've been following, so I'll  
14   ask Kasey to attend and give you a quick briefing.

15          One last thing I wanted to maybe leave on a  
16   little bit more positive note, is we do have scheduled in  
17   October, there will be a joint workshop. I'm hoping it  
18   will be attended by the Corps, the Department, and the  
19   Bureau over how we're doing, I would say not only just the  
20   flood risk activities in the Delta area, but also the  
21   water management and the ecosystem restoration activities.  
22   It's really our ability to show a fully integrated what's  
23   happening collectively across organizations that affect  
24   that part of the region.

25          That's something that was -- we committed to in a

1 letter back last October with Secretary Chrisman. So we  
2 are fulfilling on that promise. This is one that I expect  
3 that Lester and Mark will attend. Secretary Snow,  
4 Director Cowin along with others in the agencies. So  
5 we're lining it up. It looks like it will be in the late  
6 October period. So from a program, that's probably a good  
7 place for many of the public, including the Board to kind  
8 of see what's happening on a broader scale what's  
9 happening in the Delta legion.

10 Any other questions?

11 PRESIDENT CARTER: Any questions for Mr. Bardini?  
12 Comments?

13 Thank you very much.

14 DWR DIVISION OF FLOOD MANAGEMENT CHIEF BARDINI:

15 I'll ask Steve to give a quick update on the  
16 Central Valley Flood Plan.

17 STATEWIDE FLOOD PLANNING OFFICE CHIEF BRADLEY:

18 Good morning, members of the Board and President  
19 Carter. Steve Bradley, Division of Flood Management,  
20 Department of Water Resources.

21 Before I start, I'd like to wish Lady Bug the  
22 best in her retirement from the Board and on her future  
23 endeavors. I really enjoyed working with her as a Board  
24 member, and even more importantly, I think, getting to  
25 know her as a person. As you can see by the resolution,

1 she has led a very interesting life up so far. So she was  
2 a very nice person to talk to. I really enjoyed working  
3 with her.

4 Getting on with the Central Valley Flood Planning  
5 update. The State Plan of Flood Control, the descriptive  
6 document, the responses that were received in early  
7 January have been developed, and revisions are now  
8 complete. It's the intent of staff to bring this to the  
9 board, I believe, next month, the revised report.

10 This information in this report will be used as  
11 supporting information for the rest of the documents that  
12 are going on in the planning process, the flood control  
13 system status report, and the major plan, other FloodSAFE  
14 efforts. So it's a very important document that states  
15 what we have as the system today.

16 Even though we're going to bring a final report  
17 in September, it's kind of a living document. It will be  
18 updated as things change, because the system is dynamic  
19 and does change. As you adopt projects, they become part  
20 of the State's Plan of Flood Control.

21 The flood control system status report, it's  
22 right on schedule. The public review draft is scheduled  
23 to be released in late October, early November. Staff is  
24 planning on bringing the report to the Board in November.  
25 After that, they will make revisions, update the draft,

1 and bring a final report to the Board, I believe, in  
2 January, intended in January.

3 Central Valley Flood Protection Plan. They're  
4 currently conducting four management action workshops.  
5 They had one on Tuesday for small communities. There's  
6 one today on integration. There's two next week on the  
7 rural and ag communities, and urban communities. So those  
8 things are going on at this time.

9 They're using these workshops as looking at the  
10 management actions that are being developed and how they  
11 affect these specific communities and what you can do to  
12 mitigate potential impacts or concerns. They're trying to  
13 deal with them before they become major issues.

14 A second round of management action work groups  
15 will be starting in September -- I think the week of  
16 September 20th. Those are the five regional areas Upper  
17 and Lower Sacramento, Upper and Lower San Joaquin and  
18 Delta. And they will begin meeting in mid to late  
19 September.

20 Gary mentioned that Phase 2 will be winding down  
21 and Phase 3 starting up. Phase 2 is intended to be  
22 finished about the end of this year. Phase 3 will be  
23 kicking off. It will again include a series of regional  
24 work groups and workshops. It will focus on developing  
25 region solutions based on the management actions that are

1 being developed in Phase 2 to support the FloodSAFE goals  
2 and objectives basically. Most of Phase 3 will be handled  
3 in 2011.

4           There is the preparation of a programmatic EIR is  
5 being kicked off for the plan. That is just starting, so  
6 the environmental documentation will be moving forward.

7           The Central Valley -- the progress report that's  
8 required by the end of this year will be presented to the  
9 Board in December. The progress report is required by the  
10 legislation that's identified in Water Code 9610, says  
11 that the Department will prepare a status report on the  
12 progress of the Central Valley Flood Plan. It doesn't  
13 have to be submitted directly to the Legislature. I  
14 believe it's required to be posted to the Board's website  
15 though.

16           And last, a second valley-wide forum is going to  
17 be held tentatively scheduled for December 9th. That's  
18 all the information I have on that at the moment. But  
19 they are trying to hold another valley-wide forum before  
20 the end of the year.

21           Are there any questions that I can answer for  
22 you?

23           PRESIDENT CARTER: Any questions for Mr. Bradley?

24           Thank you very much.

25           STATEWIDE FLOOD PLANNING OFFICE CHIEF BRADLEY:

1           Thank you.

2           PRESIDENT CARTER: Move on to our next item on  
3 the agenda, which is number 8, Report of the Activities of  
4 the Executive Officer.

5           Mr. Punia, good morning, welcome.

6           (Thereupon the an overhead presentation was  
7 presented as follows.)

8           EXECUTIVE OFFICER PUNIA: Good morning, Board  
9 President Ben Carter and Board members. Jay Punia,  
10 Executive Officer, Central Valley Flood Protection Board.

11           I'm going to give you a quick synopsis of the  
12 activities of your staff, and then I'm going to invite Len  
13 Marino, the Board's Chief Engineer to brief you on the  
14 status of our permit backlog.

15                               --o0o--

16           EXECUTIVE OFFICER PUNIA: On the personal side,  
17 I'm glad to report it to you, that Steve Dawson is back  
18 after his surgery. And he's again helping us. And we  
19 have -- we are now using Steve's services in a different  
20 form. Our new staff is now well versed with writing the  
21 permits, and we are asking Steve to review the permits, so  
22 that it is for the -- to make sure that they're  
23 consistent.

24           And in addition, as requested by President Ben  
25 Carter, Len Marino has developed a checklist to make sure

1 that before bringing the permits, that we go through the  
2 checklist to make sure all the requirements are fulfilled.  
3 And we are going to share that checklist with you during  
4 the next meeting.

5 Quick update on the Sutter Bypass 2D hydraulic  
6 model. I'm glad to report again that the agreement  
7 between the U.S. Fish and Wildlife Service, DWR, and the  
8 Board has been executed to cost share the funding for this  
9 agreement. And the task order is now with the DWR  
10 contract office. And this task order will be executed  
11 once the State budget is in place.

12 And as I previously mentioned, the Board's Chief  
13 Engineer is continuing his discussions with DWR, so that  
14 we can utilize DWR staff to analyze the permits and to  
15 also assist the U.S. Army Corps of Engineers review of  
16 their permits. And that inter-agency agreement is  
17 underway.

18 Updating our regulations. On Tier 1B, staff met  
19 with our Chief Counsel and DWR legal staff to go over our  
20 regulation update drafts. These updates are based upon AB  
21 1165.

22 --o0o--

23 EXECUTIVE OFFICER PUNIA: And on the technical  
24 side, on our Tier 2B updating the regulations for the  
25 technical aspects of our regulations, staff is



1 coordinating with DWR and they're planning to have the  
2 red-lined version of the proposed changes for the Board's  
3 consideration in the September Board meeting.

4           Gomes Lake Joint Powers Agreement. As you may  
5 recall, there was some disagreement among the member  
6 agencies. And there was a concern that the State may have  
7 to step up and form a maintenance area for operation and  
8 maintenance of this area.

9           But I'm glad that the member agencies have  
10 stepped up and they're ready to execute the agreement  
11 among themselves with the revised cost sharing formula.  
12 And I want to give credit to Keith Swanson and the Board's  
13 Chief Engineer for intervening in this, and making sure  
14 that the maintenance stays with the locals and that they  
15 can execute the new agreement, in which each agency will  
16 pay their fair share for the cost of the operation and  
17 maintenance.

18           Road 9 Progress Report. Board staff have  
19 coordinated with DWR survey team. And the survey was  
20 completed in August. And based upon the survey, the staff  
21 will do a hydraulic analysis. And in addition, the Board  
22 staff is in the process of initiating an environmental  
23 study for this proposed solution for Road 9.

24                           --o0o--

25           EXECUTIVE OFFICER PUNIA: California Levees

1 Roundtable. Gary already briefed you on a quick summary,  
2 that the policy guidance letter on the vegetation variance  
3 process will be finalized by the Corps by the end of  
4 October. And one thing to Mr. James Dalton, he was pretty  
5 straightforward. When we asked him to share all the 450  
6 comment letters, he was pretty blunt and that they are not  
7 planning to do so.

8 And then there was a question discussed about  
9 changing the Corps' policy. He was again pretty blunt  
10 that they are not planning to change the Corps' vegetation  
11 policy, the engineering and technical letter. However, he  
12 mentioned that they're open to listen to our concerns and  
13 propose solutions regarding that policy, but they are not  
14 planning to change the Corps ETL on vegetation on the  
15 levees.

16 And related to that item, as our commitment,  
17 based upon the California Central Valley Flood System  
18 Improvement Framework, the second progress report was due  
19 to the U.S. Army Corps of Engineers. And that report was  
20 sent to the U.S. Army Corps of Engineers on August 24th.

21 And I want to thank Gary Bardini and his staff  
22 for putting the progress report so that we can send it on  
23 behalf of the California Roundtable to the U.S. Army Corps  
24 of Engineers in asking them to continue the eligibility  
25 under PL 84-99.

1           Quick update on the 408 projects -- the projects  
2 in the pipeline that will be coming in front of you  
3 seeking to modify the existing flood control project.

4           Staff met with the Feather River West Levee  
5 Rehabilitation Project. This project is being proposed by  
6 the Sutter Butte Flood Control agency and they're gearing  
7 up to upgrade their levees in Sutter county. And whenever  
8 I meet with the Sutter county folks, I think they  
9 acknowledge and recognize that Yuba county has done much  
10 better in the flood control arena than Sutter county. But  
11 with this formation of the assessment district, I think  
12 they are aggressively now working to catch up, so that  
13 they can improve the levees in the Sutter county side  
14 also.

15                               --o0o--

16           EXECUTIVE OFFICER PUNIA: And on the Sacramento  
17 side, SAFCA is planning to bring the next reach of the  
18 project, Reach 10 to 12B, Sacramento River East Levee  
19 Project for consideration -- for a 408 permit at the  
20 September Board meeting.

21           And the staff is continuing working with the West  
22 SAFCA, West Sacramento Area Flood Control Agency, for  
23 their 408 request for the Sacramento Bypass Project.

24           Enforcement Actions. Staff, as all of you are  
25 aware, that the order was issued to the eight properties

1 on the Bear Creek. And the hearings have been postponed  
2 until the Board can formalize its process. But in the  
3 meantime, there has been some progress made by the  
4 property owners. And the local maintaining agency is  
5 stepping up to clear some of the non-controversial items.  
6 And our staff is thinking that we will prepare some kind  
7 of a press release to let the people know that some  
8 progress is being made on the ground.

9 BOARD MEMBER SUAREZ: Mr. Punia.

10 EXECUTIVE OFFICER PUNIA: Garden Highway. Staff  
11 if preparing --

12 BOARD MEMBER SUAREZ: Mr. Punia.

13 EXECUTIVE OFFICER PUNIA: -- to open and  
14 enforcement hearing at the September Board meeting, but is  
15 subject to if the process is acceptable to the Board,  
16 which we are going to discuss today.

17 BOARD MEMBER SUAREZ: Mr. Punia, real quick on  
18 the Bear Creek.

19 EXECUTIVE OFFICER PUNIA: Yes.

20 BOARD MEMBER SUAREZ: That's certainly wonderful  
21 news, and I appreciate the work you and your staff have  
22 done to get working with that 30 percent number.

23 And I was hoping that whatever communication  
24 piece gets prepared, let's make sure that the elected  
25 officials, both at the State level and local elected

1 officials get a copy it, so they know also how -- the  
2 progress you're making.

3 EXECUTIVE OFFICER PUNIA: We will make sure they  
4 get the copy.

5 --o0o--

6 SECRETARY HODGKINS: Jay?

7 EXECUTIVE OFFICER PUNIA: Yes.

8 SECRETARY HODGKINS: I appreciate the idea of  
9 getting a press release out. I think this is the kind of  
10 thing that you have to be very careful of, because of the  
11 potential for the media to selectively use your  
12 information and potentially give the impression that all  
13 is well here. And I don't think all-is-well-here is the  
14 situation we're in.

15 So in many ways, this is a case where I'm not  
16 sure it makes a lot of sense to go to the media, because  
17 of the potential for whatever you give them to  
18 misrepresent, not intentionally, but the conditions on the  
19 ground and make the problem worse in the long run.

20 EXECUTIVE OFFICER PUNIA: We will revisit and  
21 think about it before issuing the media release. But I  
22 think the point we want to share is that some work has  
23 been done by the locals and the Local Levee Maintaining  
24 Agency on those eight properties.

25 SECRETARY HODGKINS: Maybe the Local Maintaining

1 Agency would like to release that. This is a case where  
2 you have to be -- you know, you just have no control over  
3 what actually gets printed. So be careful.

4 EXECUTIVE OFFICER PUNIA: Thank you for the  
5 guidance.

6 California High Speed Rail is getting active, as  
7 we know. And staff is anticipating that there may be  
8 potentially 15 permit applications between Merced and  
9 Fresno, where they will cross the waterways under our  
10 jurisdiction. And staff is participating in their  
11 meetings and advising them what they can do to expedite  
12 the process.

13 San Joaquin River Restoration Program. Lower San  
14 Joaquin Levee District board members met with our Board  
15 members to discuss the concerns being expressed by the  
16 Lower San Joaquin Levee District associated with the San  
17 Joaquin River Restoration Program.

18 And in today's agenda Item number 12, the Board  
19 will consider sending a letter related to this item to the  
20 State Water Resources Control Board.

21 I just want to appraise the Board that along with  
22 the flood control project, there are several habitat  
23 restoration projects that will be coming in front of you  
24 in the future months. Some of these projects are listed  
25 here.

1                               --o0o--

2               EXECUTIVE OFFICER PUNIA: With this, if you have  
3 any questions, I will be glad to answer. Otherwise, I  
4 will invite Len Marino to over the permit backlogs.

5               BOARD MEMBER RIE: Question.

6               EXECUTIVE OFFICER PUNIA: Yes, please.

7               BOARD MEMBER RIE: At our meeting last month, I  
8 raised the issue of the High Speed Rail Authority paying  
9 the Corps money to get their permits expedited. And you  
10 were going to check into that and get back to us this  
11 month. And since you raised the issue, and the High Speed  
12 Rail Authority is going to be looking for us to expedite  
13 their permits, those same permits are going to need to go  
14 to Corps operations for review. And I would hope that  
15 because it's another State agency, those permits don't  
16 push the other permits aside. So we need to have that  
17 discussion about some coordination with the Corps on  
18 funding to staff up and get these permits expedited. So  
19 where are those discussions?

20              EXECUTIVE OFFICER PUNIA: Yeah, thanks for  
21 reminding us. Based upon your comment last month, we did  
22 discuss this at the Executive Committee level, between DWR  
23 and the Board, whether we should fund the U.S. Army Corps  
24 of Engineers under their Section 214 authority, so that  
25 they can expedite the review of the Early Implementation

1 Project, so that we can fund a couple of positions, so  
2 that they can expedite the review of the Early  
3 Implementation Project that will relieve their other staff  
4 to focus on the other permits.

5 But at the Executive Committee level, the  
6 decision was, it's more of putting a priority on this  
7 item. It's not a funding issue at the Corps, but it's  
8 changing the priorities, how they allocate their  
9 resources. So the group decision was that DWR will take  
10 lead and start working with the Division, so that we are  
11 more aligned with our priorities between DWR, the Board,  
12 and the Department of Water Resources.

13 And DWR may fund -- I think Gary was quoting  
14 about \$1.6 million per year, so that our programs are more  
15 aligned with the U.S. Army Corps of Engineers rather than  
16 funding the operations unit under Section 214 to expedite  
17 the review of the Early Implementation Program.

18 So that's the overall response. We did not  
19 discuss specifically for the high speed rail, but how we  
20 can expedite the Corps review of the early implementation  
21 projects.

22 Gary may have additional information.

23 PRESIDENT CARTER: If I may interject, your  
24 question last month was more pointed towards getting some  
25 bond funds against some of the early implementation



1 project work and permitting, so that the early  
2 implementation projects do not take precedence or higher  
3 priority over the 208.10 permits that we have on our plate  
4 as well, related also to the high speed rail.

5           The bottom line at that discussion at the  
6 Executive Committee was that short term it was felt that  
7 it's a better strategy to have a letter of agreement with  
8 the Division, and specifically the Division, because we  
9 have some -- there are some issues at the district with  
10 respect to, for lack of a more delicate way to put this,  
11 some attitudes -- some individual attitudes within the  
12 District.

13           So we wanted to go to the Division level to get  
14 direction back to the District on some agreements, and  
15 putting some funds against that specific Letter of  
16 Agreement to assist with the allocation of resources  
17 within the Corps at both the Division and the District.

18           And then long term, advocating at the  
19 Headquarters level for prioritizing dollars towards  
20 the -- and this is what Jay is talking about, in terms of  
21 long term aligning the Corps' priorities with ours.

22           So that's kind of the direction that we took.  
23 And it's aligning priorities. It's also aligning  
24 attitudes really quite honestly to put it pretty bluntly.

25           SECRETARY HODGKINS: Let me add a little, Teri,

1 so you don't -- I mean, when the subject came up, in  
2 effect what Mr. Bardini said is he wants to pay the Corps  
3 the cost of getting them to work productively with us on  
4 our entire efforts towards including flood protection in  
5 the Central Valley. He cited experience he's had in the  
6 past where we have agreements to fund additional work by  
7 the Corps, but it doesn't do any good, because we really  
8 haven't got the Corps to agree to focus on that particular  
9 element of the work.

10 And I think what Gary was trying to say is the  
11 permits are very important to everybody, but to think that  
12 are the State's overall problems with the Corps are going  
13 to get better if we give them money for the permits, and  
14 that the permits are going to get better may be naive.  
15 And he wants, in effect, to continue to work with the  
16 Corps to fund an effort to improve the alignment between  
17 the Corps and the State in the Central Valley, which goes  
18 also to this issue of redirecting how the Roundtable is  
19 functioning.

20 And I think that that makes a lot of sense to me,  
21 from the standpoint of if we give them money for this,  
22 then it sounds like our -- us, the State, our overall  
23 priority is on the permits. And I'm not sure that's the  
24 case. I think the vegetation and things like that are  
25 perhaps more important than the permits.

1           We did discuss -- Mr. Marino had an idea, and I  
2 hope when we gets up here, he'll talk a little bit about  
3 how that has progressed, the idea of taking some of our  
4 staff and putting them at the Corps to assist the Corps in  
5 processing our permits, and with the idea of getting the  
6 Corps to train those folks, so that we better understand  
7 what it is the Corps expects, so that as he's also  
8 pursuing money for technical support, so that, in effect,  
9 we can start doing the kind of technical analysis that we  
10 are now leaving to the Corps to do, so that when it gets  
11 over there, the Corps only has to decide whether they  
12 agree with our analysis and our recommendation as opposed  
13 to conducting their own.

14           So can you talk about that when you get up here,  
15 Len.

16           CHIEF ENGINEER MARINO: Will do.

17           SECRETARY HODGKINS: And I personally think in  
18 the long run that's a little better approach, in terms of  
19 fixing the problem, even if we give them money and somehow  
20 that got the backlog reduced, then when you take the money  
21 away, we're going to go right back -- there's the  
22 potential of going right back to where we are.

23           So we still haven't done a good job of explaining  
24 the concern here.

25           BOARD MEMBER RIE: You know, I appreciate your

1 efforts, and I'm glad that we're talking about this, but  
2 you know, it sounds like in the long run, these are all  
3 great ideas, but what are we doing in the short term? How  
4 are we going to get some resources committed to the 208.10  
5 permits that are non-EIP projects? I mean, I haven't  
6 heard anything that helps with that problem.

7 BOARD MEMBER SUAREZ: Ms. Rie, if I can add, to  
8 me it's -- your concern kind of addresses a more  
9 fundamental one. That's a great discussion some folks on  
10 this Board are having with some people not on this Board.

11 There's a big policy discussion that this Board  
12 hasn't had a chance to have as a complete Board, whether  
13 that scenario that was outlined and suggested by Mr.  
14 Bardini is satisfactory to us. You know, I hear Mr. Rie  
15 say no. I tend to kind of agree with her.

16 It seems to me though it's the sort of thing that  
17 this Board should be having a discussion about and not a  
18 subgroup making assumptions that the rest of the Board  
19 would be comfortable with the approach adopted or  
20 suggested.

21 So to me the bigger concern is the issue of  
22 communication on this very, very important issue.

23 BOARD MEMBER BROWN: Mr. Chairman.

24 PRESIDENT CARTER: Sir.

25 BOARD MEMBER BROWN: This is an important issue.

1 I'd like to hear Mr. Marino's report, I think, before we  
2 get too heavily involved in this issue, and see what  
3 progress he's been able to make.

4 EXECUTIVE OFFICER PUNIA: Thank you. One more  
5 item I just want to share, that we are working with the  
6 new Colonel's office so that we can invite the Colonel to  
7 address the Board. At that time, I think the Board can  
8 express their concerns on this matter too to the new  
9 Colonel.

10 Thank you.

11 CHIEF ENGINEER MARINO: Good Morning, President  
12 Carter and members of the Board. Len Marino, Chief  
13 Engineer.

14 I wanted to first address Mr. Hodgkins' comment  
15 regarding the sharing of staff with the Corps forces.  
16 I've had several discussions about this concept with  
17 Meegan. Meegan is very enthusiastic about it, and is  
18 willing to partake in the project.

19 The only constraints she has right now is she  
20 doesn't have any place to put the bodies. And it's  
21 contingent on part of the Corps moving to a different  
22 building that would free up some space in her office so  
23 she could take two to four of our engineers and basically  
24 she's telling us that they would like to have our  
25 engineers work side by side with their engineers in kind

1 of a training and development, and also assisting with the  
2 review of the permits.

3 The Corps is doing very detailed technical  
4 especially hydraulic analyses on just about every permit  
5 that involves a federal project feature. And the training  
6 that those engineers that we send over there is going to  
7 be invaluable, because they could come back after six  
8 months and basically help our in-house Board staff with  
9 doing some of these reviews that would shorten up the  
10 review time.

11 And I think it's a win-win for everybody. And we  
12 would keep these folks on our payroll, and they would be  
13 just dedicated to doing our own permits, our 208.10s and  
14 even our EIPs that get over there.

15 So this is the avenue I think that is going to  
16 get the most traction with DWR management and the Corps'  
17 management.

18 SECRETARY HODGKINS: Is there any reason we  
19 couldn't put an item on the agenda that would allow the  
20 word to engage in this discussion and get somebody from  
21 the Corps over here to talk about it as well, as part of  
22 the next meeting? I mean, I think that's a good way to  
23 move it forward.

24 PRESIDENT CARTER: There is no reason.

25 SECRETARY HODGKINS: Yeah. So let's --

1           PRESIDENT CARTER:   Let's move on.

2           SECRETARY HODGKINS:  -- do that.  Get Gary  
3 involved too.

4           CHIEF ENGINEER MARINO:  We'll proceed along those  
5 lines.  We're already talking about that with -- one of  
6 the bullets that was presented on the Executive Officer's  
7 report was the contract for additional engineering and  
8 environmental staff technical support, which we're going  
9 to be getting from Division of Flood Management.  That  
10 process is moving along.  We haven't actually identified  
11 the individuals who are going to be helping us, but it's  
12 contingent on the State getting a signed budget.

13           So that's the mulligan that we have to deal with  
14 right now a signed budget.

15           PRESIDENT CARTER:  Mr. Marino, you've got three  
16 minutes.  You have three minutes.

17           CHIEF ENGINEER MARINO:  Three minutes.  Okay,  
18 I'll get right into the tracker.  This month we have 161  
19 permits in our universe.  We have -- let's go to the  
20 graphic here.  One hundred sixty-one permits in the  
21 universe.  We have five issued this past month.  We have  
22 two awaiting issue.  Fifty-five are prioritized with the  
23 Corps for the September, October, and even the November  
24 meetings.  We're already tacking the November meeting.

25           We have 93 in the staff analysis area, and 11

1 newly received. This is the pie chart that shows you the  
2 breakdown of the permits in a pie chart form.

3 And the staff evaluation section is the largest  
4 one that has 93 different applications in it. And what we  
5 did was we prepared an explosion of that. And this chart  
6 shows the various breakdowns of where the permits are in  
7 the staff evaluation cycle. The large blue slice over on  
8 the left is property rights issues. Those are mostly tied  
9 up with Calaveras River.

10 The big purple slice at the bottom is outside  
11 agency issues that we have to resolve before we can issue  
12 them. And then the big blue slice over on the right is  
13 pending denial recommendations. And those would have to  
14 be brought to hearing in front of the Board.

15 --o0o--

16 CHIEF ENGINEER MARINO: That's it for today. If  
17 there's any other questions, I can take them now.

18 PRESIDENT CARTER: Any questions for Mr. Marino?  
19 Thank you very much.

20 All right, ladies and gentlemen, we are moving on  
21 to Item 9, which is the Consent Calendar. As you recall,  
22 we modified the agenda to postpone Item 9A and move Items  
23 9C and 9M to hearings. So we also changed the title of 9T  
24 to reflect Yolo County, instead of Sutter County.

25 So what we have remaining are what's on the



1 Consent Calendar, with the exception of the three items  
2 that have been pulled, either to a future meeting or to a  
3 hearing.

4 Are there any questions on the Consent Calendar?

5 BOARD MEMBER BROWN: I have question on 9K, Mr.  
6 Chairman.

7 PRESIDENT CARTER: Go ahead, Mr. Brown. 9K.

8 BOARD MEMBER BROWN: The revegetation planting  
9 plan includes trees Willows, shrubs, and so forth in the  
10 flood right of ways. So I wonder trees keep popping up as  
11 far as revegetation. And I don't know where the Corps is  
12 on this, and I'm not sure where we are either.

13 PRESIDENT CARTER: Is Mr. Wong here?

14 The question, Mr. Wong, is where is the Corps  
15 with respect to the plantings in the floodway.

16 BOARD MEMBER BROWN: The trees, willows.

17 STAFF ENGINEER WONG: Joo Chai Wong, Board staff.  
18 Can you repeat the question again?

19 BOARD MEMBER BROWN: Well, in the revegetation,  
20 the project analysis 5.0, revegetation planting plan  
21 includes trees and willows and shrubs in the flood right  
22 of way.

23 SUPERVISING ENGINEER TARAS: This is Curt Taras,  
24 Chief of the Encroachment Branch. We have not received a  
25 Corps letter for this item, so it's pending Corps comment.

1 SENIOR ENGINEER BUTLER: No, that's not true.

2 BOARD MEMBER BROWN: Okay. That's all, Mr.  
3 Chairman.

4 PRESIDENT CARTER: There is, with respect to the  
5 vegetation --

6 STAFF ENGINEER WONG: Let me explain. Sorry.

7 We received a Corps letter for permit application  
8 18593A. That was back in July. And the condition from  
9 the Corps is to have French Camp Slough to convey at least  
10 2000 cfs. And with respect to this Item 9K, 18593-A, the  
11 design consultant performed an additional hydraulic  
12 analysis to incorporate the revegetation planting. And in  
13 the model they used, I think 3,970 cfs for the analysis  
14 for the 100-year event. Because 3,970 cfs is more than  
15 2,000, that's why we considered it's okay, and it complied  
16 with the Corps condition.

17 BOARD MEMBER BROWN: Okay.

18 PRESIDENT CARTER: And I notice the LMA has asked  
19 that a -- that the applicant maintain the vegetation  
20 within the channel as a comment on their letter. That  
21 they submitted. Has the applicant agreed to that?

22 MR. AL-HINDI: Hi, Board members. My name is  
23 Omar Al-Hindi. I'm with the City of Stockton Public  
24 Works. And yes, we have agreed to maintaining the  
25 vegetation within French Camp Slough for the Sperry Road

1 Project.

2 PRESIDENT CARTER: Okay, thank you.

3 MR. AL-HINDI: Thank you.

4 PRESIDENT CARTER: Any other questions on this  
5 one?

6 SECRETARY HODGKINS: Not this specific one, but  
7 the Consent Calendar as a whole.

8 PRESIDENT CARTER: Okay, moving on to the Consent  
9 Calendar as a whole.

10 SECRETARY HODGKINS: How many Corps letters do we  
11 have?

12 PRESIDENT CARTER: How many of the Corps letters  
13 do we have that are required?

14 CHIEF ENGINEER MARINO: We have a total -- this  
15 is Len Marino, Chief Engineer. We had a total of 11  
16 requested and we got seven. We're missing four.

17 PRESIDENT CARTER: And where are they?

18 CHIEF ENGINEER MARINO: So four of them would be  
19 contingent approvals. And those are identified in the  
20 staff recommendation as such.

21 PRESIDENT CARTER: Could you just review that for  
22 the Board, please, and the public.

23 CHIEF ENGINEER MARINO: Sure. We requested a  
24 total of 11. We got a total of seven back from the Corps  
25 on time. And so we're looking for four more. And those

1 pertain to 18423-A, 18580, 18589, and 18596. Those four  
2 still need Corps letters, and we will park the permits in  
3 a holding pattern till we receive them.

4 PRESIDENT CARTER: Could you go over those  
5 permits numbers again, correlating to the Consent.

6 CHIEF ENGINEER MARINO: Okay, the Permit numbers  
7 are 18423, 18580, 18589, and 18596.

8 PRESIDENT CARTER: So those correspond to our  
9 Consent Calendars 9B, 9G, 9J, and 9M. 9M has been pulled  
10 to a hearing, so it's no longer on Consent. So there are  
11 three on Consent that do not have Corps letters.

12 Any other questions on the Consent?

13 All right, we'll entertain a motion on the  
14 Consent. What's the Board's pleasure?

15 BOARD MEMBER BROWN: I so move, Mr. Chairman.

16 PRESIDENT CARTER: So we have a motion to  
17 approve. Is a second?

18 SECRETARY HODGKINS: Second.

19 PRESIDENT CARTER: We have a second.

20 Mr. Punia, would you call the roll.

21 EXECUTIVE OFFICER PUNIA: Board Member Emma  
22 Suarez?

23 BOARD MEMBER SUAREZ: Aye.

24 EXECUTIVE OFFICER PUNIA: Board Member Butch  
25 Hodgkins?

1 SECRETARY HODGKINS: Aye.

2 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

3 BOARD MEMBER RIE: Aye.

4 EXECUTIVE OFFICER PUNIA: Board Member John

5 Brown?

6 BOARD MEMBER BROWN: Aye.

7 EXECUTIVE OFFICER PUNIA: Board President Ben

8 Carter?

9 PRESIDENT CARTER: Aye.

10 So the Consent Calendar carries. Thank you very  
11 much.

12 Ladies and gentlemen, let's take a 10-minute  
13 recess and then we will be back here to continue with our  
14 agenda, which is Item 10 Hearings and Decisions.

15 (Thereupon a recess was taken.)

16 SECRETARY HODGKINS: Ladies and gentlemen, if I  
17 could ask you to take your seats, we'll go ahead and  
18 continue with the meeting, please.

19 We are moving on with our agenda to Item 10A.  
20 This is the Sacramento County Regional Parks Application  
21 Number 18557, Sacramento County, to consider the approval  
22 of Permit Number 18557 to construct approximately 2.9  
23 miles of multi-use asphalt, concrete, and parallel dirt  
24 equestrian trail and other features, including a bicycle  
25 and pedestrian bridge along the right or the north bank of

1 Dry Creek designated floodway in Rio Linda, between 24th  
2 Street and Dry Creek Road.

3 As you'll recall, ladies and gentlemen, this item  
4 was continued from our July 22nd meeting. And what we'll  
5 do -- at that meeting, we had heard -- it was Item 5C. We  
6 had heard our staff report, and we had heard from the  
7 applicant, and we had heard from a number of members of  
8 the public, both in support and in opposition.

9 We continued this because we didn't feel we had  
10 given appropriate notice to the public with respect to our  
11 holding this hearing.

12 What I'm going to do is ask staff to high-spot  
13 the presentation that they made in July, where they're not  
14 going to go through the entire presentation again, because  
15 we do not have the time for that. And those of you who  
16 spoke in the July meeting, you're welcome to address the  
17 Board again, but I'm going to ask you not to repeat  
18 yourself. That is all on the record. It is part of the  
19 record as part of this hearing.

20 And if you have something in addition to what you  
21 said in July that you'd like to share with the Board,  
22 you're more than welcome to do that.

23 I would also ask that the public limit their  
24 comments to no more than three minutes. And I will be  
25 watching the clock.

1           So we have a busy schedule. Let's proceed.

2           Mr. Butler, good morning and welcome.

3           (Thereupon an overhead presentation was  
4           Presented as follows.)

5           SENIOR ENGINEER BUTLER: Thank you, President  
6           Carter, members of the Board. For the record, Eric  
7           Butler, Senior Engineer, Board Staff.

8           So I will attempt to high spot everything. And  
9           please, if there's something that anyone wants more  
10          information on, ask me. And that goes for members of the  
11          public, if there's something that I miss, when it's your  
12          turn to come up and talk, I'd be happy to dialogue with  
13          you.

14          So again, we're talking about the designated  
15          floodway of Dry Creek in northern Sacramento county.

16                               --o0o--

17          SENIOR ENGINEER BUTLER: This slide shows  
18          essentially the upstream and downstream ends of the  
19          project, east of Rio Linda and above the former McClellan  
20          Air Force Base.

21                               --o0o--

22          SENIOR ENGINEER BUTLER: President Carter has  
23          already gone through the components of the project, so I  
24          won't repeat that.

25                               --o0o--

1           SENIOR ENGINEER BUTLER: We looked at this map  
2 last time, again provided by the County, that shows the  
3 various features.

4           Today, I'm going to focus on the protestant  
5 letters and my opinion as to the content of their  
6 protests. And then I'm looking for the County to comment  
7 as well and to hear from the protestants.

8                           --o0o--

9           SENIOR ENGINEER BUTLER: Again, the trails are  
10 constructed on currently fallow ag land and park land  
11 that's owned by the County, parallel to Dry Creek, within  
12 the adjacent ag lands and in the DF. So all these things  
13 are before you today, because it's within our DF.

14           There is a Q Street roadway that runs east-west  
15 through about the middle of the project. There's a  
16 signaled street crossing that the project will include.  
17 And then there's a parking lot that will be constructed at  
18 grade. And so for purposes of the hydraulic analysis, it  
19 was not necessary to evaluate that, since it's not  
20 changing the contour of the land at all.

21                           --o0o--

22           SENIOR ENGINEER BUTLER: The hydraulic model was  
23 originally developed by MBK in 2008 for a Letter of Map  
24 Revision to FEMA that was put together by the city and the  
25 county. That's all since been approved. And so they use



1 the same model twice to evaluate this project.

2 --o0o--

3 SENIOR ENGINEER BUTLER: Again, I went through  
4 all this at the last meeting. I'll just highlight the key  
5 points. There's really two components of concern  
6 hydraulically that everyone wanted to evaluate. One is  
7 the bridge and one is the long trail structure. So the  
8 bridge was evaluated at both 10-year and 100-year water  
9 surface elevations. They designed the bridge -- they  
10 ultimately settled on a design that lowered the low cord  
11 of the bridge to approximately the 10-year water surface  
12 elevation, with the thinking that it would require the  
13 least intrusive volume of embankment to be constructed in  
14 the floodway for the bridge.

15 So with that in mind, they took that conservative  
16 approach on the bridge design. And when you look at the  
17 computed change at the 10-year flow at the bridge, you get  
18 a difference of minus .02 to plus .02. So essentially,  
19 there's a very small impact right at the bridge. And then  
20 within 50 feet or so from the bridge, that impact goes  
21 away.

22 At the 100-year level, we have about a  
23 three-tenths of a foot impact right on the upstream side  
24 of the bridge, which you would expect with a bridge  
25 blocking a portion of the flow.

1           Again, it's a very localized impact within about  
2 50 feet. And once you get about 50 feet away, especially  
3 downstream, we're below a .1 of a foot amount of impact.

4           BOARD MEMBER RIE: Mr. Butler?

5           SENIOR ENGINEER BUTLER: Yes.

6           BOARD MEMBER RIE: Is the bridge going to be  
7 under water during a 10-year storm?

8           SENIOR ENGINEER BUTLER: In a 10-year event, I'm  
9 not sure how much of the bridge would be under water.  
10 Certainly, in a larger event, the bridge could be  
11 partially submerged.

12          BOARD MEMBER RIE: Is there protection, so that  
13 the bridge embankments don't wash away during the storm?

14          SENIOR ENGINEER BUTLER: The county is adding  
15 some scour protection features to the embankments. They  
16 can talk to you more specifically about the details of  
17 that, but, yeah, I believe they've considered  
18 high-velocity scour impacts and the design of embankments  
19 accordingly.

20          BOARD MEMBER RIE: Is that part of this project  
21 and this permit?

22          SENIOR ENGINEER BUTLER: That's part of this  
23 project, yes.

24          BOARD MEMBER RIE: Okay.

25          BOARD MEMBER BROWN: What about debris back-up on

1 the bridge?

2 PRESIDENT CARTER: I'm sorry, what about the?

3 BOARD MEMBER BROWN: Debris backing up on the  
4 bridge?

5 SENIOR ENGINEER BUTLER: There will be potential,  
6 because the bridge is designed to be low in the floodway  
7 for it to capture debris.

8 And I think we've conditioned the permit so that  
9 after any high water event, the County is responsible to  
10 go out and inspect the bridge and remove any debris that  
11 is accumulated there.

12 BOARD MEMBER BROWN: I was thinking more  
13 specifically during the high-water event.

14 SENIOR ENGINEER BUTLER: It is possible. Their  
15 model actually -- the way they modeled that was very  
16 conservative in nature. They blocked out a rectangle of  
17 the whole bridge, and basically took that out of  
18 conveyance for purposes of the computation.

19 So the results that I'm presenting today  
20 basically look at the bridge as if it's a complete  
21 blockage of the floodway. And again, I think we see the  
22 magnitude of the impacts are quite small.

23 I believe that's the second point here, or maybe  
24 not. Let's see.

25 So anyway, I think I went through this slide.

--o0o--

SENIOR ENGINEER BUTLER: Let me go forward.

Again, the key points at 64.8 feet, that's the computed change in the 10-year project water surface elevation. The magnitudes are plus or minus .02, which is about a quarter of an inch, plus or minus.

And then at the 100-year elevation, under base or nonproject conditions, it's 66.4. The model computed about an .08 of a foot rise at the 100-year elevation, due to the bridge, so just slightly less than an inch right at the bridge.

--o0o--

SENIOR ENGINEER BUTLER: This is a graphical presentation of the model results. And the arrow is pointing to the bridge location right about in the center of the image. And there's a couple little yellow outlined areas that are on the upstream side of the bridge about a .1 of a foot and on the downstream side about a decrease of about a .1 of a foot.

So again, we're plus or minus a .1 or so, depending upon how you view the data right at the bridge.

--o0o--

SENIOR ENGINEER BUTLER: So based on those results alone, I deem that the model hydraulic impacts of the bridge are acceptable, because of the small magnitude

1 of the computed impacts above the 10- and 100-year water  
2 surface elevations, and that these impacts are limited to  
3 the immediate vicinity of the bridge.

4 And as a further precaution, I mentioned to Ms.  
5 Rie's question, the county is proposing to place porous  
6 erosion control mats on the creek-side of the bridge  
7 abutments to look at erosion.

8 --o0o--

9 BOARD MEMBER RIE: Mr. Butler.

10 SENIOR ENGINEER BUTLER: Yes, ma'am.

11 BOARD MEMBER RIE: With that increase in water  
12 surface elevation, how much freeboard do we have where the  
13 water surface increases .8 of a foot?

14 SENIOR ENGINEER BUTLER: Freeboard as reference  
15 to the bridge?

16 BOARD MEMBER RIE: To the creek banks or the  
17 river banks.

18 SENIOR ENGINEER BUTLER: Well, I don't know that  
19 freeboard is the right term to look at there. You're  
20 going to have a slight rise or decrease in water surface  
21 elevation in the immediate vicinity of the bridge at those  
22 values that I --

23 BOARD MEMBER RIE: Well, where you have the  
24 increase in water surface elevation, you have river banks  
25 or creek banks, do we have freeboard in that localized

1 area where you see the water increasing

2 SENIOR ENGINEER BUTLER: Oh, you're basically  
3 asking will this overtop the banks in these areas, I  
4 think? And the answer to that is there should be  
5 sufficient freeboard in this area.

6 BOARD MEMBER RIE: How much freeboard?

7 SENIOR ENGINEER BUTLER: The question is how much  
8 does the flood inundation area expand because of the  
9 slight rise in the elevation. And so that's what I'm  
10 going to get to with some further slides.

11 BOARD MEMBER RIE: Do we still have three feet of  
12 freeboard?

13 SENIOR ENGINEER BUTLER: I don't know if there's  
14 three feet of freeboard.

15 BOARD MEMBER RIE: Two feet?

16 SENIOR ENGINEER BUTLER: That information is not  
17 presented in the data, but Mr. Archer from MBK I'm sure  
18 can answer that question.

19 BOARD MEMBER RIE: Okay.

20 SENIOR ENGINEER BUTLER: So then the next point  
21 was -- so that's the bridge analysis.

22 The next analysis is what -- is there any  
23 hydraulic impact of significance caused by the proposed  
24 trail?

25 And MBK again took out the model, after we were

1 receiving some protest letters to evaluate is there an  
2 impact of the trail. Now, the trail again is designed to  
3 be approximately two to three inches in height above  
4 existing ground elevation.

5 --o0o--

6 SENIOR ENGINEER BUTLER: So it was modeled with a  
7 five inch height to be conservative. So up to -- it was  
8 modeled basically up to 250 percent of design in its  
9 overall height. So if you're looking at a cross-section,  
10 you've got this trail coming at you. And we're talking  
11 about putting in, in the model, no more than five inches  
12 of fill to produce this trail.

13 And at the location of the bridge, due to the  
14 trail, the change in water surface elevation just  
15 downstream of the bridge, it dropped because of the trail  
16 about a .1 of a foot or about 1.2 inches.

17 And that's pretty typical when you create a  
18 constriction, you have some higher velocities, and you'll  
19 actually get a decrease in water surface elevation.

20 Furthermore, as we move downstream from the  
21 bridge up to 2,000 feet, the model is indicating again  
22 we're not raising the water surface elevation, we're  
23 actually decreasing it up to as much as .04 of a foot  
24 decrease. So it's showing here from the bridge down about  
25 2,000 feet we don't have an impact.

1           There are some localized water surface elevation  
2 changes adjacent to the trail where the trail crosses Q  
3 Street. Remember I mentioned we have a signalized  
4 crossing as part of the project. On the upstream side of  
5 the bridge, most likely due to the back-water effects of  
6 the crossing -- I use the term bridge. I just mean  
7 crossing, the model is indicating about .08 of a foot  
8 increase or slightly less than an inch.

9           Just downstream of the crossing, we have a  
10 decrease in computed difference elevation of .07 of a  
11 foot. So let's just say we're within an inch impact plus  
12 or minus on either side of the Q Street crossing, as  
13 indicated by the model due to the trail.

14           And, in general, if we look at along the trail  
15 over the average distance of the trail, we're looking at  
16 about a .02 of a foot impact because of the crossing.

17           So we've got some unique things going on at the  
18 bridge, and some unique things going on at Q Street. But  
19 in general, the overall impact is about a quarter of an  
20 inch up to an inch plus or minus at a couple of sites.

21                       --o0o--

22           SENIOR ENGINEER BUTLER: The key thing here with  
23 respect to the trail -- and again, you know, because of  
24 all that, I deemed that the model is indicating that the  
25 hydraulic impacts are acceptable, because of the small



1 magnitude, the conservative modeling of the trail height,  
2 and I should also say the localized extent of the greatest  
3 amount of impact, which is at the Q Street crossing.

4 --o0o--

5 SENIOR ENGINEER BUTLER: And I'm going to come  
6 back to hydraulics in a little bit when we talk about what  
7 are the comments that the protest letters addressed.

8 PRESIDENT CARTER: You are high-spotting this,  
9 right?

10 SENIOR ENGINEER BUTLER: Yes, I am. Thank you.

11 I talked about hydroseeding for vege cover and  
12 erosion control. And I talked about preserving the  
13 riparian vegetation, and that any of the CEQA-required  
14 mitigation is outside of the floodway, at a local county  
15 park. So we don't have concerns over CEQA mitigation  
16 plantings.

17 --o0o--

18 SENIOR ENGINEER BUTLER: We've got  
19 endorsements -- endorsement letters. We have the Corps'  
20 non-fed comment letter that we received back in November.  
21 No red flags from that. And there's no local levee  
22 maintaining agency that we're concerned about here, for  
23 purposes of the flood control project.

24 --o0o--

25 SENIOR ENGINEER BUTLER: So we've got four

1 protest letters. And this was -- this was really, as  
2 President Carter mentioned, why we are back here today,  
3 because we weren't able to give them enough notice.

4 So right after the meeting, I prepared a complete  
5 package. I updated the staff report with the version that  
6 you're looking at today. And I had it sent via certified  
7 mail to all four protesters. It went out on August 2nd.

8 We received return notifications confirming the  
9 receipt from two of the protestants, and we did not  
10 receive green cards back from the other two. Ms.  
11 Pendlebury did however mail them an additional copy via  
12 standard U.S. mail. So I believe we've done our due  
13 diligence to let them know plenty of time in advance this  
14 month what our recommended -- what our staff  
15 recommendations were.

16 Again, what Title 23 requires us to look at the  
17 content of the protest, the concerns that are related to  
18 flood control are really what the Board is looking at --  
19 is required to look at. So that's all I'm going to  
20 discuss.

21 --o0o--

22 SENIOR ENGINEER BUTLER: This is a map provided  
23 by the county. It overlays the model results with the  
24 four property owners. And we'll kind of go back and forth  
25 to blowups of this over the next couple of slides.

1 But basically, if you see green color, green is  
2 kind of representing a water surface elevation change of 0  
3 to .05 of a foot. If you see light, light blue, it's the  
4 negative. It's 0 to -.05. Darker blue goes above  
5 negative .05. And if we could zoom in, we'll see there's  
6 a little bit of yellow slightly above .05. So get a  
7 reference here of we're going to go from upstream to  
8 downstream through the four property owners, and we'll  
9 talk about what they're claiming, what my analysis  
10 indicates, and then we'll overlay the graphics here.

11 --o0o--

12 SENIOR ENGINEER BUTLER: So the first one --

13 PRESIDENT CARTER: Mr. Butler, just going back to  
14 that other slide. So red is an increase in water surface  
15 elevation. Yellow is an increase in water surface  
16 elevation. Green is an increase in water surface  
17 elevation in decreasing amounts.

18 SENIOR ENGINEER BUTLER: Correct.

19 PRESIDENT CARTER: And then when you get to blue,  
20 it's a decrease in water surface elevation.

21 SENIOR ENGINEER BUTLER: Right, so the blue  
22 colder colors are decreases.

23 PRESIDENT CARTER: All right, I just wanted to be  
24 clear.

25 SENIOR ENGINEER BUTLER: So the first property

1 owner we'll mention is Tamara Rose. She has the  
2 northernmost property, highlighted here midway up. And  
3 it's also the only property that's adjacent to the bridge.  
4 Okay, the first part of the hydraulic analysis.

5 --o0o--

6 SENIOR ENGINEER BUTLER: Her claim related to  
7 hydraulics was that the proposed bridge would affect her  
8 property, which is about 65 feet from the bridge site by  
9 forcing the flow of Dry Creek onto her property.

10 We looked back at what the analysis said, right  
11 at the upstream side of the bridge about .3 of a foot  
12 rise. And that drops below .1 of a foot within 50 feet.  
13 She's about 65 feet out. So I'm inferring from these  
14 results, the model would indicate that her impact would be  
15 less than a .1 of a foot or 1.2 inches at her property.

16 And considering the conservative nature of the  
17 modeling -- remember, we talked about they blocked out the  
18 whole area of the bridge from flow, the small magnitude of  
19 the computed change, it's concluded that the computed  
20 hydraulics are minor, the computed impacts are minor if  
21 not significant.

22 Now, we didn't attempt to go out and do surveys  
23 of the sites. We didn't visit the sites. And so that's  
24 my analysis based on what the model says. And I'm looking  
25 to hear from the protestants as to what they claim, and

1 what our -- and if MBK wishes to make any statements as  
2 well. But that's my analysis based purely on the model.

3 --o0o--

4 SENIOR ENGINEER BUTLER: And then this is a  
5 blowup of that first slide that shows her property. And  
6 you can see towards the western extent of her property,  
7 the model is indicating it's -- the graphical portrayal of  
8 the model is indicating negative impacts. Even though the  
9 numerical impacts that I stated, which were presented in  
10 the report, say there could be a slight impact, as much as  
11 an inch. So we're somewhere an inch or less.

12 PRESIDENT CARTER: When you say a negative  
13 impact, is that higher water surface elevation or less?

14 SENIOR ENGINEER BUTLER: No, I'm sorry. A  
15 negative value of the impacts. So an impact where the  
16 computed water surface change decreases.

17 PRESIDENT CARTER: A decrease in water surface  
18 elevation.

19 SENIOR ENGINEER BUTLER: Correct. I'll try to  
20 use the word decrease.

21 PRESIDENT CARTER: Negative and positive have  
22 different connotations here.

23 SENIOR ENGINEER BUTLER: Yeah, okay.

24 So here we see again the property that's closest  
25 to the bridge. You can see the localized, little bit of

1 orange red color here, but it appears, based on -- you  
2 know, assuming this is properly laid out and that the  
3 results are accurately portrayed, that the impacts would  
4 be, I'll say, minor at best.

5 --o0o--

6 SENIOR ENGINEER BUTLER: The next property is  
7 Vicki Rose. It's this larger parcel here kind of in the  
8 center. And this light line moving across the page is the  
9 Q Street crossing, the Q Street roadway.

10 --o0o--

11 SENIOR ENGINEER BUTLER: Ms. Vicki Rose, she  
12 stated that if the proposed project, the trail, shoulders,  
13 parking lot, et cetera caused extensive flooding, then she  
14 wants the Board and the County to consider reinforcing her  
15 property to prevent such flooding. In general, she was  
16 supportive of the equestrian trail, as long as it didn't  
17 cause any increase to flooding.

18 The model indicated at the 100-year water surface  
19 elevation that there was a localized increase in water  
20 surface elevation due to the trail just upstream of Q  
21 Street, about an inch. And that the average change in  
22 water -- the average increase in water surface elevation  
23 was about a quarter of an inch along the entire project --  
24 along the entire trail.

25 So again considering the conservative nature of

1 the model -- remember, I said they went -- they used a  
2 five-foot high cross section -- five-inch high  
3 cross-section of the trail, instead of the two to three  
4 that they are designing.

5 So again, I'm saying the modeling is  
6 conservative. There's a very small localized magnitude at  
7 the roadway, and I think the hydraulic impacts are  
8 insignificant.

9 If we just go back to the map just for a moment,  
10 you'll see that it's in this area that we're talking  
11 about, a slight rise upstream, a slight rise downstream  
12 and her property is further upstream than that.

13 So if we look at the graphical depiction of the  
14 model results, it's in the green area --

15 --o0o--

16 SENIOR ENGINEER BUTLER: -- which generally is  
17 the 0 to .05 of a foot increase in water surface  
18 elevation.

19 The next property owner is Gregory Rossbo.  
20 There's two properties out here in the lower portion of  
21 the screen. The Rossbo property is the bigger of the two,  
22 and the more -- and the property that extends more out  
23 into the floodway. The last property of Mr. and Mrs.  
24 Ferreria is this smaller rectangle here.

25 So with respect to the Rossbo property --

1                   --o0o--

2               SENIOR ENGINEER BUTLER:  -- Mr. Rossbo claimed  
3   that the road base that would have to be imported to  
4   construct the trail would block the natural flow of water,  
5   and it would divert waters onto his property.

6               So his request was that he be provided with 1,000  
7   cubic yards of native soil to support and preserve the  
8   natural creek bank on his property.

9               Again, we looked at the computed modeling  
10   results.  You recall from the map, he's downstream of Q  
11   Street.  Right at the vicinity of Q Street, we saw a net  
12   decrease of a little less than an inch in the water  
13   surface elevation.  And again, we recall that there's an  
14   average computed change of about .02 of a foot or a  
15   quarter of an inch along the entire pedestrian trail.

16              So again conservative modeling, small magnitudes,  
17   I think the computed hydraulic impacts we can conclude --  
18   I conclude they're insignificant.

19              The County responded -- their Water Resources  
20   Department responded to the Rossbo letter.  And I would  
21   invite them to provide comments on their response once  
22   they're up here.  That's attachment G3 in your handout.

23              And again, so here's the Rossbo property.  You  
24   can see the western edge of the property is out into the  
25   area where we're see a graphical look of 0 to .05 of a



1 foot positive increase in water surface elevation.

2           You can see back up here, here's where Q Street  
3 is. So even though Q Street had some increase above it,  
4 it's really not local to his property. And I don't think  
5 that has any impact on his property there.

6                               --o0o--

7           SENIOR ENGINEER BUTLER: And finally, the  
8 Ferreria property, again off the outside of the green.

9                               --o0o--

10           SENIOR ENGINEER BUTLER: The Ferrerias were also  
11 concerned that the project might worsen local flood  
12 conditions. They raise miniature hours. They're, of  
13 course, concerned for the horses' safety during flood  
14 events.

15           And their request, related to hydraulic impacts,  
16 was that the creek bank closest to their property be  
17 improved to offset the work on the other side. And I  
18 wasn't quite clear exactly what that means. But in terms  
19 of looking at what the computed modeling results say,  
20 again we're downstream of Q Street, so I think we've  
21 established -- at least I'm convinced in my mind that the  
22 Q Street impacts relative to where the Ferreria property  
23 is, don't have an impact on their property.

24           But that the -- the about quarter inch of rise  
25 along the entire pedestrian trail might. Again,

1 conservative modeling, small magnitude, I think we can  
2 conclude -- at least I've concluded that any impacts are  
3 insignificant.

4 --o0o--

5 SENIOR ENGINEER BUTLER: And again, there's the  
6 graphic showing their property.

7 --o0o--

8 SENIOR ENGINEER BUTLER: Moving on to supporting  
9 letters, many of these agencies, organizations, or  
10 individuals spoke last time.

11 --o0o--

12 SENIOR ENGINEER BUTLER: In terms of  
13 environmental compliance, I did not get to this last time,  
14 so let me just quickly go through here. Our staff, our  
15 environmental staff, they've independently reviewed the  
16 county's initial study and Neg Dec from July of '09.  
17 They've independently reviewed the mitigation, monitoring,  
18 and reporting plan, as well as the Sacramento County  
19 resolution, which was filed with the Clearinghouse.

20 The County determined that the project wouldn't  
21 have a significant effect on the environment. They  
22 adopted their Neg Dec in October of '09. They filed a  
23 Notice of Determination in November of '09. And that our  
24 staff finds that, although the project could have a  
25 potentially significant effect on the environment, that

1 there will not be a significant effect, because revisions  
2 in the project had been made or agreed to by the project  
3 proponent.

4 And the proponent has also incorporated mandatory  
5 mitigation measures into the project plans to avoid  
6 identified impacts or to mitigate those impacts to a point  
7 where no significant impacts will occur.

8 And these mitigation measures have also -- that  
9 are included in the reporting plan, they address impacts  
10 to air quality, biological resources, hydrology, and water  
11 quality and cultural resources. And they're further  
12 described in that plan.

13 --o0o--

14 SENIOR ENGINEER BUTLER: With our Water Code 8610  
15 considerations, Effects on State Plan of Flood Control,  
16 this project is not within any federal flood damage  
17 reduction project. They hydraulic analyses are  
18 conservative in nature. They result in computed water  
19 surface elevations that are minimal in magnitude,  
20 localized in area, and do not adversely impact the Dry  
21 Creek designated floodway or adjacent properties.

22 With respect to effects of reasonably projected  
23 events, impacts on climate change or future hydrology and  
24 floodplain conditions in the Sacramento River basin, have  
25 not been studied by the Board, the Corps, or other

1 partners. And the Dry Creek designated floodway is well  
2 upstream from the Sacramento River. Therefore, there's no  
3 tidal influence here. It might change over time with  
4 long-term climate change.

5 --o0o--

6 SENIOR ENGINEER BUTLER: We've added two permit  
7 conditions since the first draft that you saw in July.

8 Condition Twenty addresses liability associated  
9 with construction, operation, and maintenance of the  
10 facilities.

11 And then we've also added Condition Twenty-One --

12 --o0o--

13 SENIOR ENGINEER BUTLER: -- which addresses  
14 holding the Board and the State, and collectively the  
15 State, safe and harmless from claims and damages related  
16 to claims filed pursuant to CEQA.

17 BOARD MEMBER RIE: Mr. Butler, there's a lot of  
18 question marks in Condition Twenty-One.

19 SENIOR ENGINEER BUTLER: What those were,  
20 sometimes when you convert text from one program to  
21 another, it interprets the quotation marks as question  
22 marks. And I caught that last night. So, they were just  
23 simply these quotation marks around State. And I think  
24 there was one other point, but those should not have been  
25 in the text.

1           BOARD MEMBER RIE:    Okay.

2                               --o0o--

3           SENIOR ENGINEER BUTLER:    So I've revised, and we  
4 have a clean copy of the resolution available for  
5 execution.  I revised it to note that the hearing was  
6 continued to today, removed the name of the Board  
7 Secretary.

8           And finally, with my recommendations, I'm  
9 recommending that the Board adopt Resolution 10-31.  It  
10 constitutes the Board's written findings and decisions in  
11 the matter of Permit Number 18557.  The resolution  
12 contains the Board's CEQA findings, findings of fact,  
13 approval of permit 18557, and it directs the Executive  
14 Officer to take necessary action to prepare and execute  
15 the permit and related documents and to prepare and file a  
16 Notice of Determination with the State Clearinghouse.

17           That concludes my presentation.

18           PRESIDENT CARTER:   Any questions for Mr. Butler?  
19           We're running short on time.  Please be brief.

20           BOARD MEMBER SUAREZ:   Mr. President, just a  
21 quick -- if somebody, Mr. Butler or the engineering  
22 experts can provide information regarding debris  
23 accumulation and impact on specific properties that we  
24 received protest letters from.  I don't see any discussion  
25 about that in the report.

1            SENIOR ENGINEER BUTLER: Well, I think -- I'm  
2 putting Mr. Archer on the spot, but I think they would be  
3 best suited to evaluate -- to provide you any knowledge  
4 that they have.

5            BOARD MEMBER RIE: And one quick question before  
6 you go.

7            SENIOR ENGINEER BUTLER: And I don't know if you  
8 want to take that now or later.

9            Yes, ma'am.

10           BOARD MEMBER RIE: Did we require a sensitivity  
11 analysis?

12           SENIOR ENGINEER BUTLER: We did not.

13           BOARD MEMBER RIE: Okay.

14           PRESIDENT CARTER: Any other questions for Mr.  
15 Butler.

16           Thank you.

17           Do we have somebody to address the --

18           SENIOR ENGINEER BUTLER: We have Mr. Archer from  
19 MBK who can address that specific question, at this time.

20           PRESIDENT CARTER: And specifically your question  
21 with respect to debris, I mean, the model reflected that  
22 the debris was going to accumulate to the point where the  
23 bridge was a complete blockage. So is it a hydraulic  
24 question or is it a clean-up question, what's the  
25 question?

1           BOARD MEMBER SUAREZ: Well, actually, it's more  
2 directly how it might impact the landowners, if at all,  
3 that have filed protest letters. Now, I realize that most  
4 of them are not -- some of them are not even close to the  
5 proposed bridge, and I understand that.

6           MR. ARCHER: I'm Mike Archer with MBK Engineers,  
7 and was involved in doing the hydraulic analysis helping  
8 Joe Countryman on that.

9           As Eric has -- Mr. Butler has mentioned, when we  
10 modeled it, we assumed the bridge railings, which in  
11 reality would probably let some water through, but could  
12 be captured debris, we essentially blocked out from the  
13 modeling, so there is no conveyance for that. So against  
14 the bridge itself, you know, we can say not explicitly but  
15 implicitly we've assumed that it's essentially completely  
16 blocked out, so it has -- I guess, it implicitly considers  
17 the effect of degree on the bridge itself. And so the  
18 impacts of the water surface that we show throughout would  
19 consider that.

20           In regards to the -- if debris against -- at the  
21 property owner's areas, that would not be something that  
22 the hydraulic modeling would be able to consider. But at  
23 the bridge site, I think implicitly the way we've modeled  
24 it, it does take into consideration the potential for  
25 debris to block the bridge railing itself.

1           We still allow -- the bridge opening underneath  
2 does allow some passage of water still. It's not -- I  
3 think it's the bridge railing itself that's completely  
4 blocked out, but the underneath -- the small area  
5 underneath is still allowing some water to go through.

6           PRESIDENT CARTER: So naturally with a flood  
7 event, there's going to be flotsam and jetsam that's going  
8 to accumulate on banks and whatnot as water rises and  
9 falls. Is there going to be any significant debris  
10 accumulation on the property owner's who we're talking  
11 about that they'll have to clean up?

12          MR. ARCHER: Yeah, I don't know the nature of the  
13 watershed so see what kind of water. You know, there may  
14 be others who know that more better than I.

15          PRESIDENT CARTER: Does that answer your  
16 question?

17          BOARD MEMBER SUAREZ: (Nods head.)

18          PRESIDENT CARTER: Okay. Does the Applicant wish  
19 to address the Board.

20                Good morning, Mr. Dickinson. I know that you  
21 addressed the Board last time. I'd ask you to try to not  
22 be repetitive.

23                SACRAMENTO COUNTY SUPERVISOR DICKINSON: Good  
24 morning, Mr. President. Sacramento County Supervisor and  
25 Chair of the Board, Roger Dickinson. I am mindful of your



1 admonition not to be repetitive, but I very briefly want  
2 to just underscore three points.

3           We have been working on this. Project for in  
4 excess of five years. It has significant and major  
5 widespread community support. You've seen that displayed.  
6 You have that in your materials.

7           Secondly, I am not unmindful of the concerns of  
8 those who have protested this. But every objective  
9 analysis of this project, which has been engineered and  
10 reengineered, drafted and revised, is there is no  
11 discernible impact that's negative to any of the property  
12 owners.

13           And thirdly, we are at the very end of our  
14 process. This is the last approval we need. We are ready  
15 to build. We need to build this this fall. If we don't  
16 do so, we will lose \$1.5 million in State and federal  
17 funds that have come to Sacramento county to build this  
18 project. That's what's at risk. And this project is  
19 foundational to our comprehensive approach to equestrian  
20 and bicycling and pedestrian facilities throughout our  
21 parkways in this part of the county.

22           Thank you very much, and I'd be happy to answer  
23 any questions.

24           PRESIDENT CARTER: Any questions for Mr.  
25 Dickinson?

1 Thank you very much.

2 SACRAMENTO COUNTY SUPERVISOR DICKINSON: Thank  
3 you.

4 PRESIDENT CARTER: Are there any -- from the  
5 applicant, is there anybody else that wishes to address  
6 the Board?

7 Okay, then we will open it up to the public. I'm  
8 going to go in the order of the cards that I have  
9 received. Again, ask you to limit your comments, be  
10 brief, and not repetitive from last month's meeting.

11 Marlene Vallee. And after that, it will be  
12 Tamara Rose. And I know, Ms. Rose, you spoke last time,  
13 so I'd ask you to not be repetitive as well.

14 MS. VALLEE: Hello. I have a flash drive. Mr.  
15 Marino, said he would help me.

16 PRESIDENT CARTER: If you can do it in three  
17 minutes, then we'll allow it.

18 MS. VALLEE: Yeah, it's three minutes.

19 I am a property owner along with Tamara Rose.  
20 And we actually own two properties out there. I don't  
21 believe the illustration really illustrated that there are  
22 two parcels out there that we are concerned about.

23 My first concern is the illustration regarding  
24 the location of the trail our there.

25 Sorry, please bear with me. Thank you.

1           This is a picture of my property looking out at  
2 where the bridge is going to be right here before any high  
3 water. And this is the picture in December of 2005. And  
4 this is where the bridge will be. I just thought you  
5 might need a little visual on the high 10-year water mark.  
6 And the bridge will be right here sending the debris --  
7 this is my porch, by the way.

8           So that, yes, the water has already come up on my  
9 property. But with the bridge right here and the debris  
10 we just talked about, the water will definitely be a lot  
11 higher and possibly up to my house.

12           I do have a Letter of Map -- also a LOMA taking  
13 my house four years ago out of the floodway. So if this  
14 bridge -- I'm going to contact FEMA, and if this  
15 impacts -- will take away that LOMA, I believe we need to  
16 consider that.

17           Another concern I have is the photo that was just  
18 shown you. The staff report showing you the location of  
19 the trail, I believe it is right here. My concern is you  
20 were going to approve this staff report with this item  
21 right here, which needs to be -- let me see, I'll enlarge  
22 it a little bit.

23           SENIOR ENGINEER BUTLER: Do you want me to go  
24 back to the slide of my presentation.

25           MS. VALLEE: I have it right here. I want to

1 talk about this slide right here that you're going to  
2 approve the trail, which is going around the Cherry Island  
3 Soccer Complex, but in actuality that's not what's going  
4 to be constructed.

5 Let's see. I've been presented with -- the  
6 county was presented with two alternative bridge  
7 locations, which they studied. This is actually where the  
8 trail is going to go along the entire length of my two  
9 properties. This is one property over here, and this is  
10 another property next to it.

11 The trailhead is going to go and end up right in  
12 front of my driveway. And this section of the trail going  
13 around Cherry Island Soccer Complex is going to be done at  
14 some other phase or maybe not done at all has been taken  
15 out of the project. I don't know if you're aware of that.  
16 So what I'd like to ask the Board is please consider  
17 these other bridge alternatives, and putting the trail  
18 away from my property. There is literally no buffer zone  
19 between this trail and my property.

20 PRESIDENT CARTER: Thank you.

21 MS. VALLEE: Okay, thank you very much. I'm not  
22 opposed to this project. I just want to let you know, I'm  
23 also an equestrian -- a member of the equestrian trail  
24 patrol, which my other members are here to support. I  
25 support the trail. I support the whole concept of this

1 project. I think it's a great idea, but not in my front  
2 yard, please.

3 Thank you.

4 PRESIDENT CARTER: Thank you.

5 BOARD MEMBER RIE: A quick question. What's the  
6 distance between the trail and your front porch?

7 MS. VALLEE: I would have to say it's about maybe  
8 60 feet.

9 BOARD MEMBER RIE: Thank you.

10 MS. VALLEE: And also, I would like to say if the  
11 bridge creates a negative impact downstream, then if the  
12 bridge were actually up a little bit further, it would  
13 actually protect my property from that additional -- from  
14 that flooding, which I just showed you. So if we're a  
15 protection board, then maybe this is something that really  
16 needs to be seriously considered.

17 PRESIDENT CARTER: Thank you.

18 Ms. Rose. And following Ms. Rose it will be  
19 Randy Aeschliman.

20 STAFF ANALYST PENDLEBURY: Ms. Rose, will be here  
21 in a second.

22 PRESIDENT CARTER: Mr. Aeschliman, would like to  
23 address the Board. We'll have Ms. Rose follow you then.

24 MR. AESCHLIMAN: Good morning. My name is Randy  
25 Aeschliman. I live in Rio Linda. I've lived there since

1 1976.

2 I'm here in support of the trail, and the  
3 Elverta -- the Rio Linda Elverta Community Plan states  
4 that we're supposed to stay as rural as possible and this  
5 trail will help us stay a rural community. And that is  
6 something that we all would appreciate in our area. It's  
7 a great asset, not only to our local area, but to the  
8 Sacramento region in whole like Mr. Dickinson said.

9 On a personal note, and I'm trying to keep this  
10 brief, like I say, I lived out in Rio Linda since '76. I  
11 run and I spent from '76 to about '95 running on horse  
12 trails in the area that are adjacent to the roads. As  
13 years have gone by, the trails have been eliminated,  
14 either by fencing or people buying the property and  
15 building on it.

16 So then I end up running on the roads mainly, and  
17 it became very dangerous. And I know last meeting a lady  
18 spoke saying that riding horses on the roads are extremely  
19 dangerous. So we need a place to exercise and to ride  
20 horses. I don't ride a horse. And I'm also not  
21 associated with any committee in Rio Linda, so I'm just a  
22 citizen.

23 So anyway, I would appreciate if you would vote  
24 for this trail. I've lived out there, like I said, since  
25 '76. I've seen two major flood events, and I don't see

1 where this trail would have made a difference to the  
2 amount of water that was flowing through Rio Linda during  
3 '86 and '95. I think the last flood we had, the water  
4 that was flowing through there was tremendous. It closed  
5 roads. And I don't think a trail would have made much  
6 difference on anybody's property. So thank you very much.

7 PRESIDENT CARTER: Thank you, Mr. Aeschliman.

8 Ms. Rose.

9 And after Ms. Rose. Ms. Moore, Charlea Moore.

10 MS. ROSE: Thank you. My name is Tamara Rose. I  
11 live at 7549 24th Street in Rio Linda, the property that  
12 you saw presented by Marlene Vallee.

13 I was dismayed to read in the August 9th edition  
14 of the Sacramento Bee that the Chief Engineer for the  
15 Flood Protection Board, Len Marino stated, "There are no  
16 show stoppers here regarding the bridge permit being  
17 issued." So has the Board already made a decision before  
18 today?

19 I have ridden my horses on this parkway regularly  
20 and extensively for the past 14 years. I'm not protesting  
21 the parkway. I'm protesting the location of the bridge.  
22 Factoring in all the fill and material needed for the  
23 bridge, the foot of it would most likely be within 40 or  
24 50 feet of my property. I've asked the County Parks to  
25 locate the bridge further upstream, but they are more

1 concerned with impacting the county owned golf course and  
2 soccer complex.

3           The master plan for this parkway admits that due  
4 to the dense railings of the bridge, there will be debris  
5 capture during high-water times. The engineers have  
6 stated that the bridge is in the middle of the floodplain  
7 and the water is not all going under the bridge.

8           When asked if the bridge would be damming up the  
9 creek, the engineer's answer was that it may be. I  
10 attended the July 22nd Board meeting and listened to the  
11 heart-warming stories of those who support the parkway.  
12 Although, none of them addressed flooding.

13           How it will be like the little sister to the  
14 American River Parkway, how property values will increase.  
15 Like the American River Parkway, what also will increase  
16 is degradation of the creek and parkway, trash, illegal  
17 camps, criminal activity, and fire. It is easy to support  
18 something that will not have a negative impact on you.  
19 None of these supporters live along the creek. None of  
20 them.

21           I find it very interesting how the application  
22 for the bridge permit has been put off for several years  
23 knowing that the county has an expiration date for the  
24 funding. Is the tactic of pushing the permit through by  
25 crying hurry up or we lose the money?



1           The parkway was approved by the Board of  
2 Supervisors based upon policies and goals in the master  
3 plan. These policies are not being met. One of the  
4 policies states, there will be no grading or paving under  
5 the drip line of existing oaks. The paved bike path will  
6 be put where they existing horse trail is, which is  
7 predominantly under Oak trees. The horse trail will be  
8 moved out to the open area.

9           The bridge is not up to the width that is  
10 recommended by the Department of Transportation, and that  
11 recommendations is also in the master plan.

12           I should not lose use of my property because  
13 County Parks was allowed to put a bridge in the floodplain  
14 so close to my house. This would be blatant negligence.

15           Thank you.

16           PRESIDENT CARTER: Thank you.

17           BOARD MEMBER SUAREZ: Mr. President, may I ask  
18 Ms. Rose.

19           PRESIDENT CARTER: Yes, go ahead.

20           BOARD MEMBER SUAREZ: Ms. Rose?

21           MS. ROSE: I'm sorry.

22           BOARD MEMBER SUAREZ: I just want to assure you,  
23 I was also dismayed to read the same quote from Mr. Marino  
24 in the newspaper. And I can assure you my mind is not  
25 made up on this issue, and I'm here with an open mind.

1 And I would warn staff in the future, as you're talking to  
2 the president, not to represent the position of this  
3 Board, especially when we have not taken a vote.

4 So I hope that everybody learns from this lesson,  
5 because it's inappropriate to suggest to anybody that this  
6 Board has made up its mind before it's taken a vote.

7 So I wanted to let you know that myself, and I  
8 know another couple of other Board members were very  
9 dismayed when they read that quote.

10 MS. ROSE: Thank you.

11 PRESIDENT CARTER: Ms. Moore. And after Ms.  
12 Moore, Ms. Boisa.

13 MS. MOORE: Good morning, my name is Charlea  
14 Moore. I live at 8840 El Verano Avenue in Elverta.

15 I'm a member of the Dry Creek Parkway Advisory  
16 Committee, and I am a supporter of this trail. I've been  
17 in the area for 30 years. I've ridden all these trails.  
18 I think one of the things that I would like to address  
19 this Board as a Flood Protection Board, is the issue of  
20 flooding in Rio Linda and Elverta, which is pretty common  
21 knowledge. It happens on a fairly regular basis, until we  
22 went into the most recent drought years.

23 But in fact, the creek does overtop and flood  
24 huge areas of Rio Linda and Elverta on a regular basis.  
25 It overtops roads. Roads are closed. Debris accumulates

1 everywhere. I'm a user of the horse arena in Central  
2 Park, and we frequently have all the sand from Cherry  
3 Island golf traps deposited in our horse arena. And so  
4 its's just that's a fact of flooding. And I know that you  
5 know that.

6 Eye believe that the hydrology that has been done  
7 on this project, where they have actually taken  
8 essentially a dam and put it where the bridge will go has  
9 shown that even if the debris completely dammed the  
10 bridge, it would still not have a significant additional  
11 impact in the flooding that's already occurring on the  
12 properties that are adjacent to the -- or in the floodway.  
13 I mean, portions of the property are in the floodway and  
14 they do flood already.

15 And so I just wanted to call your attention to  
16 that, and the fact that debris does accumulate, and that  
17 when you're in a floodway and this entire project is in  
18 the floodway, that is a real consideration.

19 Thank you.

20 PRESIDENT CARTER: Thank you.

21 Ms. Boisa and then Mr. Eggleston.

22 MRS. EGGLESTON: Mrs. Eggleston.

23 PRESIDENT CARTER: Mrs. Eggleston.

24 MS. BOISA: My name is Linda Boisa. I'm a member  
25 of the Dry Creek Parkway Advisory Committee. I represent

1 the Dry Creek Conservancy. I'm also a member of the Rio  
2 Linda Equestrian Trail Patrol. And we have -- we all  
3 fully support this trail. We would love this trail to go  
4 in. It will give access to many horse community members.  
5 And we also believe that the flooding would be minimal.  
6 And we really hope that you vote for this open, so that  
7 the funds will go through and we won't miss out on this  
8 the great opportunity.

9 Thank you.

10 PRESIDENT CARTER: Thank you.

11 Ms. Eggleston and then Ms. Moser.

12 MRS. EGGLESTON: Yes. My name is Barbara  
13 Eggleston. I'm the former chairperson of the Equestrian  
14 Trail Patrol.

15 And also the north area volunteer coordinator of  
16 the Creak Week Annual Cleanup effort. I'm also a property  
17 owner along the Ueda Parkway Steelhead Creek. And I've  
18 Ridden these trails for 30 years. And I fully support the  
19 model as presented by the engineer, in regards to the  
20 flooding that is brought up by property owners.

21 In '86, we were so under water and there was  
22 debris everywhere, and that picture looked high and dry to  
23 me for a property in very bad conditions. I don't know if  
24 the picture was '86 or when it was. I'm just addressing  
25 their concern. I've ridden through there myself, and, you

1 know, that's one concern they have, and I wanted to  
2 address that.

3 I fully support the trail. Thank you.

4 I got the feeling time is of the essence.

5 PRESIDENT CARTER: It is.

6 Thank you.

7 Ms. Moser and then Mr. Brehm.

8 MS. MOSER: Thank you for hearing me. I was at  
9 the last meeting. And I'm a member of the Equestrian  
10 Trails Patrol. I am a member of the Dry Creek Parkway  
11 Advisory Committee, and I'm a 51 year native Sacramentan.

12 My concern about this project is that there's no  
13 question the benefits of the project to the County, to the  
14 greater, certainly to bicycle, pedestrians, and  
15 equestrians who have no access to this property at all.

16 My comment that I'd like to make today is that  
17 facing the loss of this funding pretty much will put this  
18 project on hold for a long, long time, because the funding  
19 is not going to be readily accessible probably for many  
20 years.

21 If there are any questions or any concerns that  
22 the Board has about impingement of the private properties,  
23 which mainly the concern is from the bridge, I would  
24 encourage you, if it's at all possible, to go ahead and  
25 approve this with any conditions that you think would be

1 necessary for further -- it sounds like this has been  
2 looked at, and looked at, and looked at over the last five  
3 years.

4 But if there's any question, if there's any  
5 possibility that the Board could go forward with this  
6 project and approve it, and if there's any conditional  
7 things that would need to be decided at a later date, I  
8 would ask that you go forward with this now, so that we  
9 can get started on this important project.

10 Thank you.

11 PRESIDENT CARTER: Thank you. Mr. Brehm and  
12 then -- I'm sorry, Mr. Brehm was on the next item. I  
13 apologize.

14 Is there anybody else from the public that wishes  
15 to address the Board on this particular item?

16 Okay, does staff or the applicant wish to address  
17 any of the concerns of the public that they have not  
18 already addressed? Have any additional comments that they  
19 would like to add?

20 SENIOR ENGINEER BUTLER: Not at this time.

21 PRESIDENT CARTER: Okay. At this point then,  
22 we'll close the public testimony portion of our hearing  
23 and move on to deliberations.

24 Ladies and gentlemen, any questions for staff or  
25 the applicant?

1 Ms. Suarez.

2 BOARD MEMBER SUAREZ: Just a quick question for  
3 staff. Kind of following up on the last comment that we  
4 heard. What kind of conditions does the proposed permit  
5 have that might help this Board address future conditions  
6 and effect some of these property owners see some impact  
7 that we haven't foreseen at this point?

8 SENIOR ENGINEER BUTLER: Well, first of all,  
9 Condition Twenty-Five addresses debris accumulation on all  
10 the fencing, which is around the -- there's some golf  
11 course fencing that they've got to go out there and  
12 inspect and clean it up after each period of high water.  
13 That's Condition Twenty-Five And I know there's some  
14 later on that address the bridge.

15 Thirty-One addresses erosion adjacent to the  
16 bridge, that the permittee, the county, shall repair  
17 eroded areas and place adequate revetment on the affected  
18 areas to prevent further erosion.

19 PRESIDENT CARTER: Thirty-Two is debris disposal.

20 SENIOR ENGINEER BUTLER: Yeah, debris disposal.  
21 I think the intent of that is debris that would be  
22 generated while the project is being constructed, as  
23 opposed to debris accumulation during operation of the  
24 project.

25 PRESIDENT CARTER: Okay.

1           SENIOR ENGINEER BUTLER:   Thirty-Six discusses  
2 repair and/or replacement of the trails should they become  
3 damaged due to any type of emergency flood fight, floodway  
4 maintenance or improvement activities in the floodway,  
5 those repairs and/or replacement shall be done at the  
6 expense of the county.

7           The county has also asked, in Condition  
8 Thirty-Seven to bear any costs of any repairs to the  
9 floodway that are made necessary by the presence or use of  
10 the trails, both the bicycle and equestrian trails.

11           And Thirty-Eight basically says that the county  
12 needs to adopt and enforce restrictions on the use of the  
13 trails that are acceptable to the Board and that basically  
14 these restrictions at a minimum restrict public access to  
15 the trails and designated adjacent areas only. That  
16 there's no motorized vehicle traffic, except that may be  
17 necessary for maintenance, enforcement, and public safety.  
18 And basically that the County shall prohibit any  
19 interference with the primary purpose of the Dry Creek  
20 Designated Floodway, which is, of course, to convey flood  
21 flows in a safe manner.

22           Thirty-Nine addresses -- it uses the term, "local  
23 flood control maintaining agency". And although there is  
24 no local maintaining agency from an endorsement  
25 perspective, the term here basically refers to the County



1 as the maintainer of their project in the Board's  
2 jurisdictional floodway.

3           So that they -- they're basically saying that the  
4 Board and the county have the right to temporarily close  
5 the trails for either improvement maintenance or emergency  
6 flood fight activities. There's some safety issues in  
7 Forty-One. I think that basically sums up everything.

8           Again, Forty-Two, is where I'm attaching the  
9 mitigation measures for CEQA as part of the monitoring  
10 plan as a condition of the permit. I don't think they  
11 really -- other than possibly there was a comment about  
12 drip line and Oak trees, you know, the overall intent of  
13 the project is to minimize or mitigate any environmental  
14 impacts. But without referring back to it, I couldn't  
15 specifically tie that together.

16           So I think the overall intent here, we're all  
17 aware that the Dry Creek Designated Floodway conveys some  
18 serious flood flows during high flood events. And we've  
19 had evidence or testimony provided today, and I recall  
20 those events as well.

21           The key is what is the incremental impact to  
22 those observed flood flows, that we would again expect in  
23 the future. And all indications are, based on best  
24 available science, that I believe has been used for this  
25 analysis, that those impacts appear to be minor at best,

1 insignificant at most.

2 BOARD MEMBER SUAREZ: Thank you.

3 PRESIDENT CARTER: So my question is with  
4 relation to the greatest impact is around the bridge, and  
5 it's the model to be less than a .1 of a foot, which is  
6 somewhere between one and one and a half inches, 50 feet  
7 away from that bridge, and diminishing as you go further  
8 way from the bridge.

9 If the topography is relatively flat, that could  
10 mean the inundation area might be large. So give me a  
11 feeling for what the difference in inundation is before  
12 and after the project. What's the footprint of the water  
13 before the project and what's the footprint of the water  
14 after the project at 100 year?

15 SENIOR ENGINEER BUTLER: I wouldn't be able to  
16 answer that.

17 PRESIDENT CARTER: What's the topography of  
18 the --

19 SENIOR ENGINEER BUTLER: The topography -- well,  
20 we looked at that picture that I just closed.

21 PRESIDENT CARTER: And particularly in relation  
22 to the property owners that have issues with this.

23 SENIOR ENGINEER BUTLER: I believe if I could get  
24 a nod, was that the Rose property that we were just  
25 looking -- Mike, can you address this? Directly

1 MR. ARCHER: Yes, I can.

2 SENIOR ENGINEER BUTLER: Let me bring Mike in and  
3 maybe I don't have to make anecdotal statements.

4 BOARD MEMBER RIE: Mr. Butler, before you get  
5 started, I had several questions earlier in your  
6 presentation. And you said Mr. Archer was going to  
7 address all of those questions. Can we have those  
8 addressed as well?

9 SENIOR ENGINEER BUTLER: Absolutely.

10 MR. ARCHER: Certainly. Thank you. Mike Archer  
11 again with MBK Engineers.

12 And to address the issue of the floodplain  
13 extent. Note that the one inch or so, and as Eric has  
14 mentioned, is very localized to the bridge. By the time  
15 you get to the boundary of the floodplain, it's less than  
16 a half -- it's basically on the order of a few one  
17 hundredths. From a mapping standpoint, from a FEMA, it  
18 would have no effect really. That kind of a change you  
19 cannot have that -- that accuracy doesn't mean anything  
20 when you get to the ground.

21 And I think you would not see any difference in  
22 the extent of the flooding. I think that was -- the key  
23 here again is that even the numbers that we're seeing that  
24 one inch is a fairly small number, but it's very localized  
25 to the bridge structure, which is in the middle of this

1 very wide floodway. And by the time you get to the  
2 boundary of the floodway, it's, you know, essentially de  
3 minimis you could say, on the order of a couple  
4 hundredths.

5 To address, I think, Ms. Rie's earlier  
6 question -- and which is the same way, and I think you  
7 brought up the freeboard issue. There are no levees in  
8 this areas, and I know freeboard is generally used when  
9 referring to levees. The natural bank -- and it's the  
10 same question. By the time you get to the bank, the  
11 natural bank and edge of the floodplain, you're down in  
12 the couple hundredths of a foot difference in water  
13 surface, which is highly -- is insignificant. It's  
14 essentially from a -- if you're standing out there, I  
15 don't think you'd see any difference in the extent of the  
16 flooding on the edge of the floodplain.

17 BOARD MEMBER RIE: I also had a question about  
18 scour at the bridge, because the bridge will be under  
19 water in the 10-year storm.

20 MR. ARCHER: The bridge itself will be out of  
21 water, the bridge deck. I think they set the bottom cord  
22 of the bridge to be just above the 10-year water surface  
23 elevation. The embankment -- or the ramps leading up to  
24 the bridge will be under water.

25 BOARD MEMBER RIE: Well, actually our staff

1 report says that the low cord is at 62 feet, and the  
2 10-year water surface is at 64 feet.

3 MR. ARCHER: Okay. I'll have to double check. I  
4 think, yeah, my recollection was -- but and then the  
5 hundred year it's under water completely, just so you'll  
6 see some of the railing --

7 BOARD MEMBER RIE: So you're saying --

8 MR. ARCHER: And the modeling we do doesn't deal  
9 with the scour aspect. I think the design, from what I  
10 understand -- and I can't speak to scour. That's not  
11 something that we've analyzed, but I believe the design is  
12 taking into consideration the scour we provided, velocity  
13 information to those who will then design and scour  
14 protection for the bridge and the bridge embankments

15 BOARD MEMBER RIE: Well, even though you didn't  
16 analyze the scour, do you know what the changes are in the  
17 velocities under the bridge?

18 MR. ARCHER: Not offhand, I do not.

19 BOARD MEMBER RIE: Okay, and then one more  
20 question. At Marlene Vallee's property, she's 60 feet  
21 from the -- I don't know, if it was the bridge or the  
22 trail, but have you looked at the changes in water surface  
23 elevation at her property?

24 MR. ARCHER: Yes.

25 BOARD MEMBER RIE: Will she be put into the

1 floodplain as a result of the trail or the bridge?

2 MR. ARCHER: Again, I think the differences in  
3 water surface that we're seeing at the boundaries of the  
4 floodplain, from my perspective would not have any change  
5 in any of the FEMA regulatory flood boundaries  
6 delineations. And I don't think it would -- I mean,  
7 it's -- by the time you get to the edge again, you're  
8 talking on the order of a few hundredths, at the most, of  
9 a foot. You know, quarter, half of an inch. And from a  
10 mapping standpoint, would not make any difference.  
11 Delineation of the floodplain, you would not see any  
12 noticeable difference.

13 PRESIDENT CARTER: Any other questions?

14 What's the pleasure of the Board?

15 BOARD MEMBER BROWN: Mr. Chairman.

16 PRESIDENT CARTER: Yes, sir.

17 BOARD MEMBER BROWN: I believe this to be a good  
18 project, and certainly has been studied long and hard.  
19 The Forty-Two conditions that staff has put on Resolution  
20 10-31 probably addresses the issues as well as can be.

21 And on that basis, I'll make a motion that we  
22 adopt Resolution 10-31.

23 PRESIDENT CARTER: Okay. We have a motion to  
24 adopt Resolution 10-31.

25 Is there a second?

1           BOARD MEMBER SUAREZ: I'll second that, Mr.  
2 President.

3           PRESIDENT CARTER: Okay, we have a second.  
4 Any further discussion?

5           BOARD MEMBER SUAREZ: I just want -- I would like  
6 to clarify for the record, that there has been a lot of  
7 discussion. I understand this has been a long process for  
8 the community. Ours is a Board of limited jurisdiction,  
9 and I want to make sure everybody understands what the  
10 nature of the decision is.

11           We cannot tell the county to go and redesign the  
12 parkway or move it. Ours is a very limited framework of  
13 decisions that we can make. So maybe counsel can help  
14 delineate those boundaries for the record, so everybody  
15 understands what the limited nature of our decision is.

16           LEGAL COUNSEL SMITH: As a general matter, I can  
17 direct your attention to the bases for denial of a permit,  
18 which are listed in Section 15, but in general the Board's  
19 jurisdiction is over flood issues and flood related  
20 issues, just as a general sense.

21           But in a detailed manner, Section 15 of the  
22 Board's regulations lists the reasons that a permit could  
23 be denied.

24           BOARD MEMBER SUAREZ: Ours is not a planning  
25 body?

1           LEGAL COUNSEL SMITH:   Correct.

2           PRESIDENT CARTER:   Okay, any other comments?

3           Ms. Rie.

4           BOARD MEMBER RIE:   Yes, I have one more question  
5 for Mr. Butler.

6           PRESIDENT CARTER:   Okay, please.

7           BOARD MEMBER RIE:   Mr. Butler, Mr. Archer wasn't  
8 able to answer some of the scour related questions. Do we  
9 have an increase in velocities in and around the bridge  
10 that will erode the creek?

11           SENIOR ENGINEER BUTLER:   We were not provided any  
12 of the velocity data. I did not ask for it, as I felt  
13 that the design features that the county was proposing  
14 would sufficiently address any scour that may occur. But  
15 I have not reviewed the raw data of the model nor asked  
16 for velocity profile drawings or results.

17           BOARD MEMBER RIE:   Is there anyone here who can  
18 answer that question?

19           MR. KOLLING:   My name is Guy Kolling, landscape  
20 architect with Sacramento County Parks.

21           And I'm sorry, what was the question again?

22           BOARD MEMBER RIE:   By placing the bridge in the  
23 floodplain, are we going to see an increase in velocities  
24 under the bridge and around the bridge?

25           PRESIDENT CARTER:   The question is not so much



1 the velocities, but are we going to have some scour as a  
2 result?

3 BOARD MEMBER RIE: Yeah.

4 MR. KOLLING: Okay, as part of the project, we  
5 are going to install -- they're a steel reinforced  
6 concrete articulated mat. They have big blocks of  
7 concrete that are held together with polypropylene ropes,  
8 so there's not rot or corrosion. And those will be placed  
9 under and around the bridge abutments.

10 And then the approach ramps to the bridge itself  
11 will have erosion control netting mats on the sides of the  
12 approaches. So our engineers, civil and structural  
13 engineer consultants, felt that that was the best solution  
14 to armor the banks, as you will, around the abutments and  
15 prevent scouring.

16 BOARD MEMBER RIE: And you're with who?

17 MR. KOLLING: Sacramento County Regional Parks My  
18 name is Guy Kolling.

19 BOARD MEMBER RIE: Okay, so it sounds like there  
20 is going to be some increases in velocities, and there is  
21 going to be erosion. So it sounds like the bridge and the  
22 ramps are protected.

23 MR. KOLLING: Yes.

24 BOARD MEMBER RIE: What about the adjacent  
25 properties? Are we going to see scour along the adjacent

1 properties that are adjacent to the bridge and the ramps?

2 MR. KOLLING: I'm not really qualified to answer  
3 that question.

4 PRESIDENT CARTER: Can anybody answer that  
5 question?

6 MR. ARCHER: I will give it an attempt again.  
7 Mike Archer with MBK.

8 Without looking at the overall results of the  
9 model, I'm going to guess that, again, with the localized  
10 impacts we're seeing, the impacts also on velocity will be  
11 very localized to the bridge. And along the boundaries of  
12 the floodplain, you will not see any noticeable or  
13 significant changes in velocities, and therefore scour  
14 should not be a problem.

15 And I think that's the nature of this floodplain  
16 is you've got the very small creek beds that carry most of  
17 the flow until you get into the very big events, where it  
18 spreads out. And generating along the boundaries of these  
19 floodplains the velocities are much lower than in the  
20 middle part.

21 And again, we're seeing very small impacts,  
22 hydraulically very localized to the bridge, so I would  
23 infer from that that the scour will be very much localized  
24 or the change or potential for additional scour because of  
25 velocity changes will be localized to the bridge.

1 But we can -- I mean, I have not -- I haven't  
2 looked at the velocity changes outside, but I think  
3 they're fairly low to start with. And with these changes  
4 in water surface, I would not expect to see any  
5 significant changes in velocities out towards the banks of  
6 the floodplain.

7 BOARD MEMBER RIE: Okay, thank you.

8 PRESIDENT CARTER: Any other questions?

9 So we have a motion before us to approve  
10 Resolution number 10-31 and a second.

11 Any further discussion?

12 Does the staff wish to comment on the Board's  
13 proposed action?

14 SENIOR ENGINEER BUTLER: No, I have no comment.

15 PRESIDENT CARTER: And the applicant wish to  
16 comment?

17 Shaking of heads no.

18 Okay, Mr. Punia, would you please call the roll.

19 EXECUTIVE OFFICER PUNIA: Board Member Emma  
20 Suarez?

21 BOARD MEMBER SUAREZ: Aye.

22 EXECUTIVE OFFICER PUNIA: Board Member Butch  
23 Hodgkins?

24 SECRETARY HODGKINS: Aye.

25 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

1 BOARD MEMBER RIE: Aye.

2 EXECUTIVE OFFICER PUNIA: Board Member John  
3 Brown?

4 BOARD MEMBER BROWN: Aye.

5 EXECUTIVE OFFICER PUNIA: Board President Ben  
6 Carter?

7 PRESIDENT CARTER: Aye.

8 Motion carries unanimously.

9 And we will close this hearing -- adjourn this  
10 hearing.

11 All right, ladies and gentlemen, we're going to  
12 move on to Item 10B, that will be followed by 9. Is there  
13 somebody here today who was specifically interested in  
14 Item 9C that was on the agenda -- was on the Consent  
15 Calendar pulled to hearing, 9C?

16 Okay, so then that will be followed by 9C and  
17 then subsequently 9M.

18 All right. So I'll call the hearing to order on  
19 Item 10B, which is Oakdale Irrigation District, Honolulu  
20 Bar Recreation Area, Application number 18599 in  
21 Stanislaus County. And this is to consider the approval  
22 of a Permit number 18599 to excavate approximately 10,800  
23 cubic yards of sediment from the channel, relocate  
24 approximately 3,000 cubic yards of material within the  
25 channel, and remove approximately .4 of an acre of

1 vegetation and place approximately 8,100 cubic yards of  
2 gravel into the channel upstream of a mid-channel island  
3 within the Stanislaus river designated floodway east of  
4 Oakdale.

5 This was also continued from our July 23rd Board  
6 meeting.

7 So Mr. Tice, good morning.

8 STAFF ENGINEER TICE: Yes. John Tice, Central  
9 Valley Flood Protection Board. We're having a technical  
10 difficulty at the moment.

11 PRESIDENT CARTER: This was continued from our  
12 July meeting at the request of the applicant, because they  
13 had not, I believe, seen the staff report in sufficient  
14 time, and had a chance to review the staff recommendation.  
15 So, Mr. Tice, if you would proceed, please, with haste.

16 (Thereupon an overhead presentation was  
17 Presented as follows.)

18 BOARD MEMBER RIE: President Carter, there were  
19 no staff reports mailed to us.

20 PRESIDENT CARTER: On 10B?

21 BOARD MEMBER RIE: Yes.

22 PRESIDENT CARTER: That's funny, I got one.

23 BOARD MEMBER SUAREZ: Not on the disk.

24 BOARD MEMBER RIE: It's not on the disk.

25 EXECUTIVE OFFICER PUNIA: Amber -- it was sent as

1 a separate item, and maybe Amber can explain. Amber, you  
2 want to explain what happened and when it was sent to the  
3 Board members.

4 You want to go to the microphone.

5 SUPPORT STAFF WOERTINK: We sent out the copies  
6 and

7 PRESIDENT CARTER: Amber, just for record, if you  
8 could please introduce yourself.

9 SUPPORT STAFF WOERTINK: Yes. This is Amber  
10 Woertink with Central Valley. But we sent out the paper  
11 copies with the paper Board packets. Those of you that  
12 received DVDs should have had an Email copy it sent after  
13 the fact.

14 BOARD MEMBER RIE: I don't have it.

15 STAFF ENGINEER TICE: Would you like mine?

16 PRESIDENT CARTER: What would you like to do?  
17 Would like to proceed with this hearing or would you like  
18 to postpone this for next meeting?

19 BOARD MEMBER RIE: Well, we've already heard this  
20 before, right?

21 STAFF ENGINEER TICE: Correct.

22 EXECUTIVE OFFICER PUNIA: Yes.

23 BOARD MEMBER RIE: If someone could give me a  
24 staff report --

25 SUPPORT STAFF WOERTINK: I have a paper copy.

1 BOARD MEMBER RIE: -- I would appreciate it.

2 PRESIDENT CARTER: Okay.

3 BOARD MEMBER RIE: And, Ms. Suarez, I don't think  
4 she has one either.

5 BOARD MEMBER SUAREZ: No, I got a paper copy. I  
6 just got one. Thank you.

7 STAFF ENGINEER TICE: Okay.

8 PRESIDENT CARTER: Mr. Tice, proceed please.

9 STAFF ENGINEER TICE: Sure. Once again, we're  
10 considering Application 18599 for the Oakdale Irrigation  
11 District, the Honolulu Bar Floodplain enhancement project.  
12 It was originally heard last month, and we're moving  
13 forward to hear it again today.

14 --o0o--

15 STAFF ENGINEER TICE: Just to reorient ourselves.  
16 The Honolulu Bar Project is approximately 12 miles from --  
17 I don't have a pointer, so we'll just have to go along  
18 here, because this is not working.

19 It's about 12 miles from Oakdale to the east.  
20 And it is located within the Oakdale Irrigation District  
21 as the graph on the right-hand side shows.

22 The project location -- the project location is  
23 up to the north -- well, to the east of the Oakdale  
24 Irrigation District service area.

25 --o0o--

1           STAFF ENGINEER TICE: There's a detailed location  
2 map where we can see Orange Blossom Road highlighted, and  
3 State Route 120, where the enhancement project is located  
4 is off of Orange Blossom Road. And Honolulu Bar is in the  
5 middle of the Stanislaus River at that location.

6                           --o0o--

7           STAFF ENGINEER TICE: And what we are asking the  
8 Board today is to approve the Oakdale Irrigation  
9 District's proposal to construct the following  
10 encroachments within the Stanislaus River: We want over  
11 these already with Mr. Carter -- President Carter.

12           The project map is before you. Basically, the  
13 worst case scenario for flooding in this area is shown in  
14 red, modeled by CBEC Incorporated with a 2D hydraulic  
15 model.

16           As you can see in various areas, they have  
17 highlighted the gravel bench areas, the floodplain  
18 terraces, the main channel, the side channel, and they're  
19 with augmentation, of course, with access roads in and out  
20 for construction purposes.

21                           --o0o--

22           STAFF ENGINEER TICE: Very quick background,  
23 which wasn't brought up before is a Steelhead Salmon  
24 habitat area. Studies suggest that its priority actions  
25 to restore this instream riparian habitat and spawning



1 habitat for the Salmon. OID's north-side regulating  
2 reservoir adversely impacted .6 acres of wetlands and  
3 vernal pools. This is part of a mitigation measure for  
4 this impact. They were not -- OID was unavailable to  
5 obtain in-kind mitigation for the 2.4 acres.

6 The Corps suggested this project to address their  
7 impacts. And it was accepted by OID. And the Fish and  
8 Wildlife service is providing a 50 percent cost share to  
9 implement this project.

10 --o0o--

11 STAFF ENGINEER TICE: We analyzed the project.  
12 We found it provides the out of kind habitat, increases  
13 the quality of available Salmon and steel habitat,  
14 increases and enhances existing floodplain, the side  
15 channel. It connects the side channel to the Stanislaus  
16 River, and revegetates the project with self-sustaining  
17 riparian vegetation. It's on property owned by the Army  
18 Corps or Stanislaus River Park System.

19 And the cotton fill are balanced within the  
20 Stanislaus River designated floodway and the project area.

21 --o0o--

22 STAFF ENGINEER TICE: Hydraulic analysis. It's  
23 pretty brief here. We have for the proposed length of the  
24 gravel bar, there's a maximum water surface elevation  
25 increase of .14 feet, and there's a maximum decrease of

1 .16 feet. A relatively short localized area.

2 --o0o--

3 STAFF ENGINEER TICE: If the shorter by 500 feet  
4 we have an increase of .09 feet, and an increase of .15  
5 feet. Once again localized increases.

6 The nearest house is nine feet above the FEMA  
7 base flood elevation, and the materials storage area is  
8 located on a high-ground area outside of the modeled flood  
9 area.

10 And all the gravel bar lengths are below the base  
11 flood elevations that are published for this area of the  
12 Stanislaus River.

13 --o0o--

14 STAFF ENGINEER TICE: There are going to be  
15 present vegetation is -- you know, non-native grasslands,  
16 shrubs, herbs, thickets, Himalayan Blackberry, trees --  
17 wow, what happened there.

18 Oh, I went backwards.

19 BOARD MEMBER RIE: Mr. Tice, have we received the  
20 Corps letter?

21 STAFF ENGINEER TICE: No, not on this one.

22 BOARD MEMBER RIE: Is a Corps letter required?

23 STAFF ENGINEER TICE: Well, we recommended in the  
24 staff report on this one not to, because it's in the  
25 designated floodway of the Stanislaus River. It is

1 downstream from Goodwin and New Melones dams. There's no  
2 downstream facilities, you know, common project features  
3 downstream from this facility.

4           So therefore, it is staff's opinion that we  
5 really don't need an Army Corps letter for this one.  
6 However, there's another part of me that says I don't want  
7 to have a permit out there, without an Army Corps comment  
8 letter, non-fed or otherwise, because I don't want to get  
9 in trouble with permits like in Bear Creek, when we didn't  
10 have them. So it's up to the Board's pleasure here. I  
11 just bring that up for your awareness that's all.

12           And I'm sorry the presentation is going goofy  
13 here.

14           BOARD MEMBER RIE: There's no federal flood  
15 control facilities within the limits of this project?

16           STAFF ENGINEER TICE: No, none whatsoever.  
17 They're greatly far away up at Goodwin Dam by Tulloch  
18 Lake. And Tulloch Lake is a holding reservoir for New  
19 Melones. So I don't think we're going to have a problem  
20 down in this part of the river. I personally went to the  
21 site. I personally took pictures. I am trying to get to  
22 that point to show you. However, nothing is -- oh, it  
23 might be working now.

24   --o0o--

25           STAFF ENGINEER TICE: Very good. Thank you, Dan.

1           There are Elderberry Bushes. However they're on  
2 high ground and they are not to be disturbed as part of  
3 this project. And they're going to replace the vegetation  
4 with four plant communities here. And the woody plants  
5 are proposed to be irrigated for the first growing season.

6                       --o0o--

7           STAFF ENGINEER TICE: Here are the photographs.  
8 As you can see, it's an area right off of Orange Blossom  
9 Road for the community to use. It is rather thick  
10 vegetated now. To the right, there's a big drainage soil  
11 picture there. It is used by the public. There's some  
12 debris there. As you can see, the boat put-in dock area  
13 here on the left that's greatly overgrown. The side  
14 channel is also greatly overgrown. The bar itself is  
15 greatly overgrown.

16           So the project proponent and the applicant is  
17 going to do a lot of work to clear this kind of stuff out  
18 and put in the riparian floodplain benches and enhance the  
19 habitat for the fish.

20                       --o0o--

21           STAFF ENGINEER TICE: And this is a look, this  
22 side channel looking north. Just slightly north of this  
23 picture, the main channel and the side channel come  
24 together.

25                       --o0o--

1           STAFF ENGINEER TICE: Originally, this was  
2 prepared as we were going to get a 210 letter. And that's  
3 up for discussion. If we want to have the letter from the  
4 Corps, we can keep it in. If not, we can move on. And  
5 there's no maintaining agency for this project area.

6                           --o0o--

7           STAFF ENGINEER TICE: CEQA conclusions came to  
8 the point there are significant effects. However, because  
9 the applicant is going to do things to the project, revise  
10 the project to mitigate those effects, there will be none.

11                          --o0o--

12           STAFF ENGINEER TICE: In the way of our 8610.5  
13 considerations, the Board -- you know, our decision is  
14 based on the evidence presented; our best available  
15 science. We do have an increase in the project proposed  
16 length of a maximum of .14 feet, and a decrease and a  
17 maximum of .16 feet. This is very localized within the  
18 same river mile, only about half a mile difference. So it  
19 should be okay.

20           And future events, you know, there could be  
21 climate control, a dam could break, but I don't think  
22 that's going to happen.

23                          --o0o--

24           STAFF ENGINEER TICE: Climate control might  
25 happen.

1           Unfortunately, I do not have a clean copy of  
2 Resolution 10-30 here for you to sign today. I will be  
3 more than happy to go back to the office and get one and  
4 bring it back for you this afternoon. But the revised one  
5 that you have in your revised packet there with the red  
6 strike-outs does take out the -- it does take out the  
7 need -- there's a line in it for the Corps letter. We  
8 took that out, and we also removed that in the Item 10 in  
9 that resolution, and we also changed the Board Secretary  
10 Section to take Lady Bug's name off and put Board  
11 Secretary down there. But that's the only changes to the  
12 resolution we took out the whereas for the Army Corps  
13 letter.

14           So we ask that the Board approve Resolution 10-30  
15 to accept the CEQA findings, the findings of fact, approve  
16 the permit that's attached to the staff report, and order  
17 to direct the Executive Officer to take the necessary  
18 action to execute the permit and related document and  
19 prepare a Notice of Determination with the State  
20 Clearinghouse.

21           And if we have any questions, please feel free.

22           PRESIDENT CARTER: Any questions for Mr. Tice?

23           STAFF ENGINEER TICE: Oh, one more thing. The  
24 applicant and I have -- we have come to agreement on the  
25 items that we had disagreements on and we have worked

1 those out. And in the permitting finalization process  
2 that will be taken care of.

3 PRESIDENT CARTER: Okay. Mr. Hodgkins, did you  
4 have a question?

5 SECRETARY HODGKINS: I do. It's a designated  
6 floodway, which means there is a water surface profile  
7 that goes with that designated floodway. A design flow,  
8 but no profile?

9 STAFF ENGINEER TICE: Eight thousand cfs metered  
10 from Goodwin Dam.

11 SECRETARY HODGKINS: Okay, that's fine. That was  
12 my question.

13 BOARD MEMBER RIE: Mr. Tice, can you go over the  
14 changes again on the resolution.

15 STAFF ENGINEER TICE: Certainly.

16 BOARD MEMBER RIE: Because the copy that I just  
17 received doesn't have any red line strike out.

18 STAFF ENGINEER TICE: May I give you mine?

19 BOARD MEMBER RIE: Sure.

20 PRESIDENT CARTER: Any other questions for Mr.  
21 Tice.

22 BOARD MEMBER SUAREZ: I have one inquiry. And it  
23 relates to, with other restoration type of projects, we've  
24 required applicants to provide us with some assurances for  
25 maintenance. And I don't see that language captured in

1 our permit language. Now, it might be this is a situation  
2 that we don't require, because there's some government  
3 entities involved, but that's not how it's been in the  
4 past. So am I remembering this wrong or do we have some  
5 standard language dealing with maintenance responsibility  
6 and assurances of a money pot to take care of that?

7 STAFF ENGINEER TICE: Within the permit, there  
8 are conditions in there, where we say to them -- Number  
9 Fourteen, the permittee shall maintain the permitted  
10 encroachments and the project works within the utilized  
11 area in the manner required and requested by the  
12 authorized representative of the Department of Water  
13 Resources or any other agency responsible for maintenance.  
14 So if we go out there and we see something that we feel is  
15 not being maintained properly, I think we can let the  
16 permittee know that they need to act.

17 BOARD MEMBER SUAREZ: I appreciate that, but I  
18 think we had talked about, in the past, specific  
19 designation of dollars for other types of restoration  
20 projects.

21 PRESIDENT CARTER: I think, Ms. Suarez, you're  
22 correct, we've asked for long-term management plans,  
23 and --

24 STAFF ENGINEER TICE: Oh, yes, there is one for  
25 this one also.



1           PRESIDENT CARTER:   Okay.

2           STAFF ENGINEER TICE:   They did submit one, and  
3   Jason is right here if you have questions.

4           PRESIDENT CARTER:   And we've also asked for some  
5   assurance that there's funding to execute that long-term  
6   management plan, and that we want to be assured that the  
7   resource agencies are comfortable with that long-term  
8   management plan, and also the continued maintenance  
9   according to that plan.

10          MR. GUIGNARD:   If I could address the Board real  
11   quick.   My name is Jason Guignard with FISHBIO  
12   representing Oakdale Irrigation District.

13          And as Mr. Tice noted, this is a mitigation  
14   project.   So as part of that Corps mitigation requirement,  
15   there is a mitigation and monitoring plan.   And part of  
16   that is 10 years of monitoring for both hydrology and  
17   vegetation of the site.   And that has been submitted with  
18   our application recently.   So staff does have that  
19   document.

20          PRESIDENT CARTER:   Okay.

21          STAFF ENGINEER TICE:   And in the resolution, one,  
22   two, three -- well, if you don't count the Army Corps one,  
23   four, five we're down -- it says here, "Whereas OID as  
24   lead agency adopted the mitigation numbers and the  
25   MMRP...", which is the Maintenance Monitoring and -- plan.

1           So everything is being adopted.

2           BOARD MEMBER SUAREZ: But it's not in the terms  
3 of our permit. There's no reference to that in our  
4 permit. Mr. Butler, you got that?

5           SENIOR ENGINEER BUTLER: Yeah.

6           STAFF ENGINEER TICE: And that could be included  
7 also.

8           SECRETARY HODGKINS: I have a question about  
9 this, and I just want to be clear. I asked the question  
10 about a hydraulic profile. Because if there was a  
11 profile, then there is something to maintain too, but  
12 there is no profile.

13           So, in effect, nobody maintains the floodway to  
14 make sure that the water surface isn't increased. And it  
15 seems like putting that kind of burden on somebody who  
16 comes into the floodway when there is no maintenance  
17 burden on any of the rest of it is going a little bit  
18 beyond fair treatment. Am I right or wrong?

19           BOARD MEMBER BROWN: I think there's three dams  
20 upstream of this site. You have Goodwin and then Tulloch  
21 and then you have New Melones, which I'm sure there's  
22 capacity in New Melones for regulating flood flows. I  
23 don't think that should be a problem.

24           SECRETARY HODGKINS: I understand that. But I  
25 think a designated floodway is we always want to make sure

1 that there is the ability to convey, in this case, 8,000  
2 cubic feet a second down here, but we don't say without  
3 raising the water surface above what it was in such and  
4 such a time. So we don't maintain. DWR doesn't maintain.  
5 Nobody goes in and clears these things out when they get  
6 overgrown with brush. So it seems to me this is  
7 consistent with the use of a designated floodway, but you  
8 could put the burden on them. I just don't know what  
9 you'd ask them to do, because we don't have anything to  
10 measure the maintenance against.

11 MR. CAMPBELL: May I clarify?

12 PRESIDENT CARTER: I suspect --

13 MR. CAMPBELL: This is Chris Campbell of cbec,  
14 hydraulic engineer.

15 PRESIDENT CARTER: Go ahead.

16 MR. CAMPBELL: So there is no Flood Board  
17 profile, but there is a FEMA profile. And we have  
18 compared it against the FEMA profile for existing and  
19 project conditions. And in both instances, it is below  
20 the adopted FEMA profile for existing conditions and  
21 project conditions. And that is what we have compared  
22 against, and we've also compared the inundation extents  
23 against the FEMA extents.

24 SECRETARY HODGKINS: Is anybody responsible for  
25 controlling vegetation to make sure the FEMA profile

1 doesn't change?

2 MR. CAMPBELL: Not that I'm aware of, but that  
3 doesn't necessarily mean that somebody is not responsible  
4 for that.

5 SECRETARY HODGKINS: Well, it would make sense  
6 then to say, as a condition, that it's the applicant's  
7 responsibility to maintain his project works, so that they  
8 do not alter the FEMA water surface profile through this  
9 area. That makes perfect sense.

10 SUPERVISING ENGINEER FUA: Can I make a comment.

11 PRESIDENT CARTER: Yes, you may.

12 SUPERVISING ENGINEER FUA: Dan Fua, Board staff.  
13 Actually, in our designated floodway, we have encroachment  
14 lines equivalent to whatever flow we have. And in most  
15 cases, it's 100-year flood flows. So we have encroachment  
16 lines. So I think the thing is, you know, we have to  
17 protect that line to make sure that it does not extend  
18 beyond that line, otherwise we extended the --

19 PRESIDENT CARTER: Are you talking about  
20 inundation lines?

21 SUPERVISING ENGINEER FUA: Yeah.

22 PRESIDENT CARTER: Okay, so there's a designated  
23 floodway that basically describes the extent of the  
24 floodway not to exceed that --

25 SUPERVISING ENGINEER FUA: Correct. Yeah, so

1 we --

2 PRESIDENT CARTER: -- so that we don't have  
3 redirected impacts.

4 SUPERVISING ENGINEER FUA: Correct. So in our  
5 designated floodway regulations, we say those are the  
6 things that you can and cannot put. And one of the  
7 conditions it says is any encroachments there that the  
8 Board approves, it should not impede the flood flows.

9 BOARD MEMBER SUAREZ: I think -- I appreciate the  
10 conversation, but my point really was that we -- in  
11 addition to promises that the approved project or work is  
12 not going to alter the way water is conveyed down this  
13 floodplain, we've also asked from other restoration  
14 projects actual pointing to pots of dollars or pointing to  
15 something specific that promises in the long term that  
16 there's going to be somebody standing there behind that  
17 commitment. And that's what I'm getting at.

18 I understand that we've probably got the  
19 commitments from the them, one way or another, but we've  
20 asked for additional assurances. And that's the part that  
21 I'm not seeing in the permit.

22 STAFF ENGINEER TICE: The Army Corps of  
23 Engineers -- John Tice again, staff engineer. The Army  
24 Corps of Engineers owns this property as part of the  
25 Stanislaus Park System.

1           BOARD MEMBER SUAREZ: I understand. And we've  
2 had other just as credible members of the community with  
3 similar projects, which we've still required additional  
4 assurances, in the form of show me where the money is for  
5 a long-term commitment to maintaining this area.

6           STAFF ENGINEER LEMON: Gary Lemon, Board staff.  
7           Board Member Suarez, to address what you're  
8 talking about, I think you're referring to a recent permit  
9 we had for Wildlands in the Yolo Bypass. And that's a  
10 mitigation bank. In my experience, that's when we deal  
11 with endowment funds and long-term management plans, when  
12 it's a mitigation bank for an endangered species.

13          PRESIDENT CARTER: I think we've done -- there  
14 have been a number of instances, Bear Creek in TRLIA,  
15 TRLIA has an endowment for the Feather River Setback on  
16 any mitigation they do there. It's not uncommon.

17          STAFF ENGINEER LEMON: All right, I just wanted  
18 to offer that.

19          SUPERVISING ENGINEER FUA: And I think the  
20 difference, Mr. President, is that, you know, the past,  
21 you know, requirements were on flood projects.

22          PRESIDENT CARTER: And in the floodway as opposed  
23 to the designated floodway or in a flood channel.

24          BOARD MEMBER RIE: Well, what is the financial  
25 commitment for the long term? I mean, is there funding

1 available? If there's problems out there, is someone  
2 going to go out and, you know, do some corrective work or  
3 is there money put in place?

4 MR. GUIGNARD: Yeah. There is an endowment set  
5 aside for the mitigation monitoring aspect that is  
6 required by the Corps.

7 PRESIDENT CARTER: That's a 10-year plan?

8 MR. GUIGNARD: That's a 10-year plan. And that  
9 is, you know, up to those 10 years you must meet these  
10 conditions. And if those conditions aren't met, there's  
11 additional monitoring and mitigation that's required.

12 After that fact -- or after those goals are met,  
13 and those terms are met, maintenance of the project would  
14 be turned back over to Army Corps, specifically the  
15 Stanislaus River Parks.

16 BOARD MEMBER RIE: And how much money is it for  
17 the 10-year commitment?

18 MR. GUIGNARD: I don't know offhand. I don't  
19 have the mitigation and monitoring project with me  
20 unfortunately.

21 BOARD MEMBER RIE: Would you say that the funding  
22 is adequate for 10 years.

23 MR. GUIGNARD: Yeah, it is adequate. And there  
24 is, you know -- this is -- both Fish and Wildlife Service  
25 as well as Oakdale Irrigation District are committed to

1 this project in the long term.

2 BOARD MEMBER RIE: Would you have any problem  
3 agreeing to a condition that requires you to have a  
4 long-term management plan?

5 MR. GUIGNARD: I think -- you know, I would have  
6 to go back, but you know there's going to be issues  
7 requiring maintenance beyond -- I mean, our feeling that,  
8 you know, the way it is modeled, there should not be  
9 significant impacts. And that after that 10-year period,  
10 it will be a self-sustaining area and should not require  
11 any additional maintenance.

12 Obviously, you know when you get into maintenance  
13 into perpetuity, I think that we would have some issues.

14 BOARD MEMBER RIE: Would you have any problems  
15 with agreeing to taking corrective action within the next  
16 10 years if the problems were to arise as a condition of  
17 this permit?

18 MR. GUIGNARD: No. You know, I believe that  
19 under the mitigation and monitoring plan we already -- you  
20 know, we're already tied to that for 10 years.

21 BOARD MEMBER SUAREZ: So we should just reference  
22 that plan as a term in the permit.

23 SENIOR ENGINEER BUTLER: Exactly.

24 MR. GUIGNARD: Yeah, if we could tailor this  
25 permit to the mitigation and monitoring, that would



1 streamline everything and that would be preferred.

2 BOARD MEMBER SUAREZ: That would be a good thing.

3 BOARD MEMBER RIE: Thank you.

4 PRESIDENT CARTER: Okay.

5 STAFF ENGINEER TICE: I have the document right  
6 here. So this can be put right into the permit referenced  
7 and put in the file. So we will have them do that also.

8 PRESIDENT CARTER: Mr. Butler.

9 SENIOR ENGINEER BUTLER: The simple solution to  
10 that is if you pull the same condition that I added to the  
11 Dry Creek permit in the prior hearing about making the  
12 mitigation and monitoring plan -- the conditions of the  
13 mitigation and monitoring plan a condition of the permit.  
14 That will accomplish what you want right there as a first  
15 step to ensuring that you have some say over the ongoing  
16 maintenance of the project as it moves forward.

17 BOARD MEMBER SUAREZ: Thank you.

18 PRESIDENT CARTER: Okay, any other questions of  
19 staff?

20 Does the applicant wish to address the Board with  
21 respect to this permit or add anything?

22 MR. GUIGNARD: No further comments.

23 PRESIDENT CARTER: Okay, are there members of the  
24 public that wish to address the Board on this particular  
25 item?

1 MS. NAGY: This is Meegan Nagy from the Army  
2 Corps of Engineers, Sacramento. I just want to clarify a  
3 statement that Mr. Tice made. The Corps does not consider  
4 this a non-fed area. This is actually within fee-owned  
5 land of the Corps' Stanislaus River Park. So we are  
6 reviewing the permit the entire thing. We have requested  
7 the actual hydraulic model itself. The applicant is  
8 aware. We just haven't received it yet. So we will do a  
9 fuel review and provide our comments, but it is on  
10 fee-owned land, so we would definitely not -- we would  
11 definitely provide full comments and not give you just the  
12 non-fed letter.

13 PRESIDENT CARTER: And Ms. Nagy, what assurances  
14 do we get from the Corps that the Corps is going to  
15 continue to maintain this after the 10-year mitigation  
16 monitoring plan, so that the designated floodway  
17 inundation is not exceeded?

18 MS. NAGY: I probably can't answer that in  
19 completeness. I would have to refer to the Parks, and the  
20 park manager and what our responsibility is within their.  
21 But if our responsibility is to maintain that to 8,000 cfs  
22 or whatever the flow is, then that would continue to be  
23 our responsibility. But I would have to check with the  
24 park manager to determine exactly what our requirements  
25 are.

1           PRESIDENT CARTER:   Where would those requirements  
2 be noted?

3           MS. NAGY:   It would be in -- the Stanislaus River  
4 Parks was developed as mitigation to the dam, so it would  
5 be within whatever those mitigation requirements are,  
6 whatever we have to maintain that area for.

7           PRESIDENT CARTER:   Okay.

8           BOARD MEMBER RIE:   Question.   If the Corps wasn't  
9 the fee title owner of this project area, would you give  
10 us a no comment letter?

11          MS. NAGY:   I'm going to answer that two ways.

12          BOARD MEMBER RIE:   It's not a federal project,  
13 right?  It just so happens that the Corps owns this  
14 property?

15          MS. NAGY:   No, it is a federal -- the difference  
16 is, from what you usually see, it is a federal project  
17 from our perspective.  How it's different is it's not a  
18 Central Valley Flood Protection Board sponsored project.  
19 So this is a case where we own/operate the entire project  
20 versus one where we've built and transferred it to a local  
21 maintaining agency.

22          In this cases, we really are the local  
23 maintaining agency, probably is the best comparison.  Does  
24 that -- so if we weren't the local maintaining agency,  
25 yes, we would provide a non-fed letter, but in this case

1 we are.

2 BOARD MEMBER RIE: Okay.

3 SECRETARY HODGKINS: Help me. There is no 208.10  
4 requirement for the Board to get a letter from the Corps  
5 on this project?

6 MS. NAGY: It's probably not 208. It's more as  
7 being our property. Does that make sense?

8 SECRETARY HODGKINS: Okay.

9 PRESIDENT CARTER: Okay. Any other comments from  
10 the public?

11 I don't have any cards on this?

12 Anybody wish to speak in support or opposition or  
13 otherwise?

14 Okay, we will close the public testimony portion  
15 of the hearing. Any other questions of staff?

16 We'll go into deliberations.

17 Proposal, motions?

18 BOARD MEMBER RIE: I'd like to make a motion.

19 PRESIDENT CARTER: Okay.

20 BOARD MEMBER RIE: We have the original  
21 Resolution 10-30, and then there was a red-lined  
22 strike-out version of the resolution. So I'd like to move  
23 that we approve the original Resolution 10-30 without the  
24 red-lined strike-out.

25 LEGAL COUNSEL SMITH: And I believe you wanted to

1 add a condition as well relating to the mitigation  
2 monitoring reporting program?

3 BOARD MEMBER RIE: Thank you. And add a  
4 condition to the permit that would make the mitigation and  
5 monitoring plan a requirement of the permit.

6 STAFF ENGINEER TICE: Correct.

7 BOARD MEMBER SUAREZ: I'm prepared to second  
8 that.

9 PRESIDENT CARTER: Okay, we have a motion and a  
10 second.

11 I don't know which resolution I've got, whether  
12 it's the original or the red-lined and strike-out.

13 EXECUTIVE OFFICER PUNIA: It's the original.

14 PRESIDENT CARTER: Because mine is clean, except  
15 for my red marks.

16 BOARD MEMBER RIE: It would be approving the  
17 clean version.

18 STAFF ENGINEER TICE: The clean version without  
19 the red lines in it.

20 BOARD MEMBER RIE: The one that you have in your  
21 hand, President Carter.

22 PRESIDENT CARTER: Okay.

23 STAFF ENGINEER TICE: Unfortunately, I lined out  
24 stuff --

25 PRESIDENT CARTER: Which includes a favorable

1 comment from the Corps to 208.10.

2 STAFF ENGINEER TICE: Yes. As Ms. Nagy has  
3 commented on, we will be receiving that.

4 BOARD MEMBER RIE: The red-lined strike-out  
5 version removed the Corps letter requirement. That was  
6 the only change.

7 PRESIDENT CARTER: Okay. All right. I know  
8 which resolution I have.

9 STAFF ENGINEER TICE: Okay, great. Thank you.

10 So we have a motion to approve the original 10-30  
11 resolution and include as a condition of the permit the  
12 mitigation -- the provisions of the mitigation and  
13 monitoring plan.

14 Any discussion?

15 Any comment from staff with respect to the  
16 Board's proposed action?

17 STAFF ENGINEER TICE: Nothing from me.

18 PRESIDENT CARTER: No.

19 From the applicant, any comments?

20 MR. GUIGNARD: (Shakes head.)

21 SECRETARY HODGKINS: I do have a question.

22 PRESIDENT CARTER: Yes.

23 SECRETARY HODGKINS: When you say we're approving  
24 the resolution, is it with or without a condition of a  
25 letter from the Corps?

1 STAFF ENGINEER TICE: It is with.

2 BOARD MEMBER RIE: It includes that condition.

3 STAFF ENGINEER TICE: It was the original one  
4 that was submitted.

5 SECRETARY HODGKINS: Okay, I just wanted to make  
6 sure that I understood.

7 PRESIDENT CARTER: The resolution where it that  
8 was -- the paragraph in question is Paragraph 10 in the  
9 resolution, which is stated, "Based on the foregoing, the  
10 Central Valley Flood Protection Board hereby approves the  
11 Honolulu Bar Floodplain Enhancement Project on condition  
12 that the Board receives a written favorable U.S. Army  
13 Corps of Engineers 208.10 comment letter. The Board also  
14 approves issuance of the encroachment Permit Number 18599  
15 in substantially the form provided as Attachment B of the  
16 staff report after such Corps comment letter is received".

17 Okay, any questions?

18 Mr. Punia, would you call the roll.

19 EXECUTIVE OFFICER PUNIA: Board Member Emma  
20 Suarez?

21 BOARD MEMBER SUAREZ: Aye.

22 EXECUTIVE OFFICER PUNIA: Board Member Butch  
23 Hodgkins?

24 SECRETARY HODGKINS: Aye.

25 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

1 BOARD MEMBER RIE: Aye.

2 EXECUTIVE OFFICER PUNIA: Board Member John  
3 Brown?

4 BOARD MEMBER BROWN: Aye.

5 EXECUTIVE OFFICER PUNIA: Board President Carter?

6 PRESIDENT CARTER: Aye.

7 Motion carries.

8 We'll adjourn this hearing. And let's take a  
9 lunch recess, after which go --

10 SECRETARY HODGKINS: I think it's possible that  
11 with respect to M, we can dispose of it very quickly.  
12 I've discussed my concern at least with counsel. She had  
13 some ideas of how to address it.

14 STAFF ENGINEER TICE: And I think 9C also. 9C,  
15 the recommendation was to ask to change the recommendation  
16 to include a Army Corps comment letter for the Aerojet  
17 permit.

18 PRESIDENT CARTER: Okay, anybody have any  
19 objections to going ahead and trying to dispatch with the  
20 Consent items moved to hearing?

21 BOARD MEMBER SUAREZ: No.

22 PRESIDENT CARTER: Okay, here we go. Take a deep  
23 breath.

24 BOARD MEMBER RIE: What's the order?

25 PRESIDENT CARTER: We're going to do 9C first.



1 This is Permit number 18483, Aerojet-General Corporation.  
2 The applicant proposes authorization of a groundwater  
3 extraction and treatment facility with an irrigation pump  
4 room, trench, sewer pipe discharging treated groundwater  
5 into a plastic pipe, and associated outfall structure with  
6 rocks slope protection on the right or north bank of the  
7 American River Designated Floodway.

8 EXECUTIVE OFFICER PUNIA: Board President, if I  
9 can make a suggestion. The only change is the staff  
10 recommendation. If the Board desires, then obviously the  
11 staff will give you the full briefing. Otherwise, he can  
12 just share with you the revised staff recommendation.

13 PRESIDENT CARTER: If the Board has no  
14 objections, and the applicant has no objections, we will  
15 dispense with a full staff report and just review the  
16 change?

17 STAFF ENGINEER TICE: The applicant has indicated  
18 to me he has no objections to moving ahead.

19 PRESIDENT CARTER: And the Board?

20 BOARD MEMBER BROWN: I don't have any objections.  
21 I have a quick question.

22 PRESIDENT CARTER: Okay.

23 Let's just review the change and then you can ask  
24 your question, Mr. Brown.

25 BOARD MEMBER BROWN: All right.

1           STAFF ENGINEER TICE: The change is in the  
2 recommendation that we add the clause, "Upon receipt of a  
3 favorable comment letter from the Army Corps of  
4 Engineers". And then we issue the permit.

5           BOARD MEMBER RIE: Is that a permit condition  
6 change or a resolution change?

7           STAFF ENGINEER TICE: No, it's just a  
8 recommendation change in the staff report, because in the  
9 recommendation we say that -- originally in the agency  
10 comments and endorsements, we say the same thing as we  
11 just did in the Honolulu Bar one, where we didn't -- we  
12 said a 210 comment letter is not required. However, in  
13 this situation, we know, as staff, there's the Folsom Dam  
14 improvements upstream, and that has increased the cfs down  
15 the American River. There's features downstream.

16           The Aerojet facility is a non-habitable  
17 structure. It's about 6,000 plus square feet. It's right  
18 in the middle of American River Designated Floodway. The  
19 Army Corps is very interested in this. We've had a  
20 meeting with -- the applicant and I have had a meeting  
21 with the Army Corps already on Monday to discuss the  
22 hydraulic model. They have the hydraulic model in for  
23 review.

24           So my anticipation is they are going to send us a  
25 comment letter. And considering there are common features

1 in federal projects downstream and upstream, I recommend  
2 to you, the Board, to get a comment letter on this permit.

3 BOARD MEMBER SUAREZ: So you want that on the  
4 permit as term? That's the question, where do you want  
5 that captured?

6 STAFF ENGINEER TICE: Oh, yes. It will also be  
7 captured in the permit condition.

8 BOARD MEMBER SUAREZ: Okay, thank you.

9 STAFF ENGINEER TICE: It will be added at the end  
10 of the permit Condition -- it will be Condition  
11 Thirty-Five that will add the Army Corps letter as  
12 attached as Exhibit A. And these conditions are  
13 incorporated herein.

14 PRESIDENT CARTER: Okay. Mr. Brown, your  
15 question?

16 BOARD MEMBER BROWN: On the treatment of this  
17 water, is it for perchlorate or TCE or what are you  
18 treating it for?

19 STAFF ENGINEER TICE: I have Robert Fagerness --

20 BOARD MEMBER BROWN: The other question is after  
21 you treat it, it says it goes to the outfall, but you  
22 don't say where the outfall goes.

23 STAFF ENGINEER TICE: The outfall goes to the  
24 bank of the American River.

25 BOARD MEMBER BROWN: It goes back in the American

1 River?

2 STAFF ENGINEER TICE: Yes, it does.

3 BOARD MEMBER BROWN: Okay, what are you taking  
4 out of it?

5 STAFF ENGINEER TICE: It's taken out of a  
6 groundwater extraction well.

7 BOARD MEMBER BROWN: No, I mean, perchlorate is  
8 that what it is?

9 MR. FAGERNESS: Robert Fagerness with Central  
10 Valley Environmental. And I'm going the consultant  
11 working for Aerojet. This particular groundwater  
12 treatment facility is primarily removing NDMA. It's a  
13 chemical associated with former rocket manufacturing over  
14 at the Aerojet facility. We're pumping approximately 750  
15 gallons per minute of water out of the existing  
16 groundwater extraction well, and treating that water with  
17 above-ground treatment system in the facility, and then  
18 discharging under NPDES permit back into the American  
19 River.

20 BOARD MEMBER BROWN: There's no perchlorate in  
21 this water.

22 MR. FAGERNESS: Perchlorate?

23 BOARD MEMBER BROWN: Perchlorate,  
24 P-e-r-c-l-o-r-a-t-e.

25 MR. FAGERNESS: Perchlorate. There's no

1 perchlorate in this particular water, no. The facility is  
2 designed to -- in the event that that contaminated  
3 groundwater from the south side of the American River does  
4 make its way over to the north side of the American River,  
5 there's sufficient capacity in the treatment facility  
6 designed to allow the expansion and implementation of  
7 perchlorate treatment if that chemical does show up in the  
8 groundwater.

9 But presently with our groundwater models, we're  
10 showing that we have really good capture on the south side  
11 of the river, so that shouldn't be a situation.

12 BOARD MEMBER BROWN: Thank you.

13 PRESIDENT CARTER: Any other questions?

14 SECRETARY HODGKINS: Quickly. You have a permit  
15 for the discharge from the Central Valley Regional Water  
16 Quality Control Board?

17 MR. FAGERNESS: That's correct.

18 SECRETARY HODGKINS: Thank you.

19 PRESIDENT CARTER: Any other questions?

20 Okay, are there any members of the public that  
21 wish to testify in support or opposition to this  
22 application?

23 Okay, we'll close the public testimony portion of  
24 the hearing.

25 Ladies and gentlemen, what do you propose?

1           The staff recommends approval of Permit number  
2 18483 with the addition of Condition number Thirty-Five to  
3 include -- to obtain a letter from the Army Corps of  
4 Engineers and include any conditions in that letter  
5 assuming it's favorable in the permit as that condition.

6           BOARD MEMBER BROWN: I'll move as proposed, Mr.  
7 Chairman.

8           PRESIDENT CARTER: We have a motion.

9           Is there a second?

10          SECRETARY HODGKINS: I'll second.

11          PRESIDENT CARTER: Okay. Any discussion?

12          No discussion.

13          Does the -- assuming the -- I assume the staff  
14 doesn't have any comment given the Board's following your  
15 recommendation?

16          STAFF ENGINEER TICE: No, sir.

17          PRESIDENT CARTER: And the applicant, does the  
18 applicant have any comment on the Board's proposed action?

19          MR. FAGERNESS: No comment.

20          PRESIDENT CARTER: No comment.

21          STAFF ENGINEER TICE: He indicates no.

22          PRESIDENT CARTER: No comment from the applicant.

23          No other questions?

24          Mr. Punia, would you call the roll.

25          EXECUTIVE OFFICER PUNIA: Board Member John

1 Brown?

2 BOARD MEMBER BROWN: Aye.

3 EXECUTIVE OFFICER PUNIA: Board Member Emma

4 Suarez?

5 BOARD MEMBER SUAREZ: Aye.

6 EXECUTIVE OFFICER PUNIA: Board Member Butch

7 Hodgkins?

8 SECRETARY HODGKINS: Aye.

9 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

10 BOARD MEMBER RIE: Aye.

11 EXECUTIVE OFFICER PUNIA: Board President Ben

12 Carter?

13 PRESIDENT CARTER: Aye.

14 Motion carries. Thank you very much, ladies and  
15 gentlemen.

16 STAFF ENGINEER TICE: Thank you very much for  
17 hearing this and delaying lunch.

18 Thank you.

19 PRESIDENT CARTER: We will close the -- adjourn  
20 that hearing and open up hearing for Item 9M. This is  
21 permit number 18596, Port of West Sacramento to -- this is  
22 one that was at the request of Mr. Hodgkins to pull from  
23 the consent. This is the Port installing 486 solar  
24 tracker arrays adjacent to the Sacramento deep river --  
25 deepwater ship channel.

1           SECRETARY HODGKINS: Yeah, if I might. I'm not  
2 sure there's a need for going through the detailed staff  
3 report. The reason I pulled this is this is constructing,  
4 in effect, a solar farm on property that used to be part  
5 of the Yolo Bypass, until the navigation levee was put in  
6 as part of the deepwater ship channel.

7           There is a flood easement over the project, and  
8 it is, I think, still within the legal definition of the  
9 Yolo Bypass, because the navigation levee is not a federal  
10 flood control levee.

11           My concern here is that I believe, and the Board  
12 is has heard testimony both from our staffs and others  
13 that the Yolo Bypass doesn't even have currently hundred  
14 year capacity.

15           I think the Central Valley Flood Plan will  
16 probably recommend some action that is likely to involve  
17 using they hydraulic capability of the deepwater ship  
18 channel for large flood events.

19           Given that that could be something that would be  
20 implemented within, I don't know, 10 to 20 years,  
21 depending on how things go, I raised the concern about the  
22 condition in here that says if it's ever required that  
23 this work be relocated for modifications to the flood  
24 project, the applicant agrees to do it.

25           And I think that that -- I talked to counsel. I



1 talked to the applicant, which actually was probably this  
2 is the disclosure of an ex parte communication earlier  
3 this morning, and counsel advises that if we think there  
4 is a likelihood that we may require the project to be  
5 relocated in the immediate future or near future, that we  
6 ought to make the condition as specific as we can.

7           And so, I think the only thing I would like to do  
8 and at least this morning the applicant indicated he was  
9 okay with this, is change that one condition. And I would  
10 like to have the Board approve the concept, of changing  
11 that condition to reflect the potential implementation of  
12 modifications to the Yolo Bypass as part of the Central  
13 Valley Flood Protection Plan.

14           I think we need to be able to work out the  
15 details of that wording sort of off line, if you can,  
16 but -- so I guess I'm asking that we approve the permit  
17 and staff's recommendation with the condition that the  
18 permit condition about relocating the facilities to be  
19 constructed will reflect the fact that the possibility of  
20 reconstruction is something that could come out of the  
21 Central Valley Flood Protection Plan, the exact wording of  
22 that condition to be worked out between staff and our  
23 attorney with some input from me working through the  
24 Central Valley Flood Protection Planning folks. And I  
25 would make that a motion.

1           So the motion is approve it with the condition  
2 that the -- can somebody give me the specific number of  
3 the condition.

4           SUPERVISING ENGINEER PORBAHA: Eighteen.

5           SECRETARY HODGKINS: That Condition Eighteen is  
6 going to be modified to reflect the fact that the  
7 permittee will be required to relocate these facilities or  
8 modify them otherwise, if that's a requirement to  
9 implement the Central Valley Flood Protection Plan within  
10 the next, I don't know, 20 years, something like that.  
11 Exact wording to be determined by staff.

12           BOARD MEMBER BROWN: And they're okay with that,  
13 the applicant?

14           SECRETARY HODGKINS: They said they were, is that  
15 correct, Tom?

16           PRESIDENT CARTER: We'll ask them. One moment.  
17 So is there any question with respect to the motion other  
18 than the content?

19           BOARD MEMBER BROWN: I'll second it to get it on  
20 the table, Mr. Chairman.

21           PRESIDENT CARTER: Okay. All right.

22           Very good. Does staff have any comments with  
23 respect to the motion?

24           SUPERVISING ENGINEER PORBAHA: I just want to let  
25 you know that I did get in touch with the Central Valley

1 Flood Protection Plan and ask their input. And they said  
2 they don't see any problem with this, since it's on the  
3 opposite side of the ship channel from the SPFC levee.  
4 Just to let you know about their comments.

5 PRESIDENT CARTER: Thank you.

6 SECRETARY HODGKINS: Thank you for checking.

7 PRESIDENT CARTER: So Mr. Brehm or Mr. Scheeler.

8 MR. SCHEELER: Tom Scheeler Port Engineer for the  
9 Port of West Sacramento. Yes, we would certainly be, you  
10 know, open to that kind of language discussion. I think I  
11 would like to see it perhaps incorporate or give  
12 consideration to incorporating the OPDE project in any  
13 improvement design for the flood control, as opposed to  
14 necessarily de facto having to move it.

15 SECRETARY HODGKINS: Okay, so you would be  
16 responsible for the cost of modifying the project, if  
17 necessary, to incorporate it into future flood control

18 MR. SCHEELER: Hopefully we could strike a design  
19 balance between the existence of the project and whatever  
20 flood control improvements, but I guess ultimately if it  
21 required -- just like the relocation language says that  
22 the project proponent would have to relocate at their  
23 cost, I guess the same would hold true for an incorporated  
24 design that, yes, we would -- there would be costs  
25 associated with that that we would have to bear, yes.

1           SECRETARY HODGKINS: That's fine with me.  
2 Details to be worked out to keep all the attorneys happy.

3           PRESIDENT CARTER: Mr. Brehm.

4           MR. SCHEELER: I was curious on one point of  
5 staff, when did that communication occur? Was that today  
6 or was that earlier that it was -- that the communication  
7 with the --

8           SUPERVISING ENGINEER PORBAHA: Yesterday.

9           MR. SCHEELER: Yesterday, okay.

10          SUPERVISING ENGINEER PORBAHA: That is with the  
11 Central Valley Flood Protection was yesterday. That's  
12 their Email Merritt Rice.

13          MR. SCHEELER: Yeah, certainly, you know,  
14 obviously there needs to be discussion. This was the  
15 first time this issue came up relative to this project,  
16 and so, yeah, we will certainly have some discussions  
17 with, you know, other agencies, whatever else, about this  
18 issue. Obviously, it's an important issue for the  
19 proponent. But yes, we're amendable to the language.

20          PRESIDENT CARTER: Thank you. Mr. Brehm, did you  
21 want to address the Board.

22          MR. BREHM: Just to confirm that we are in  
23 agreement. We'd prefer to have more of a design input,  
24 rather than just a moving of the project, sort of mandate,  
25 but we'd definitely be open to designing it up front to

1 accommodate future plans.

2 PRESIDENT CARTER: Okay. Thank you.

3 Any other questions. Are there any other members  
4 of the public that wish to address the Board in support or  
5 in opposition of this project application?

6 Okay.

7 So we have a motion before us to approve with a  
8 modification to Condition number Eighteen to provide for  
9 relocation, if necessary, or incorporating design in order  
10 to accommodate the plans of the Central Valley Flood  
11 Protection Plan moving forward, some language to that  
12 effect.

13 SECRETARY HODGKINS: Yes.

14 PRESIDENT CARTER: We do have a motion and a  
15 second, is that correct?

16 LEGAL COUNSEL SMITH: I just have one point of  
17 clarification. We're not getting rid of the language  
18 that's currently there, we're just adding additional  
19 language?

20 SECRETARY HODGKINS: That's correct.

21 PRESIDENT CARTER: Okay. All right.

22 BOARD MEMBER RIE: What are we adding?

23 PRESIDENT CARTER: Mr. Hodgkins, would you like  
24 to --

25 SECRETARY HODGKINS: We do not have the specific

1 language at this time, okay. But in effect, the language  
2 would put the applicant on notice that an alteration of  
3 the flood control plan that would involve putting perhaps  
4 this property back into the Yolo Bypass could occur as a  
5 result of the Central Valley Flood Protection Plan, and  
6 that the condition as is written up there would apply to  
7 something that might occur in the near future. We're  
8 trying to make them aware of the fact -- I'm trying to  
9 make them aware of the fact that you could be doing a  
10 project here that has to be removed or modified within the  
11 next 20 years. And that's all.

12 PRESIDENT CARTER: Okay.

13 BOARD MEMBER SUAREZ: Mr. President.

14 PRESIDENT CARTER: Yes, Ms. Suarez.

15 BOARD MEMBER SUAREZ: I'd like -- I understand  
16 what Mr. Hodgkins is trying to accomplish, but I don't see  
17 how this project is different from any other project that  
18 might be affected in the future by the Central Valley  
19 Flood Protection Plan once it's finalized. And my concern  
20 is if we starting inserting language like this in a  
21 permit, then somebody that doesn't have similar language  
22 in the future can say, well, you knew how to write this  
23 kind of language. You didn't put it in my permit  
24 therefore you should can't require me to do anything  
25 different, just because there's a new planning document in

1 place.

2 So all to say that I think this is a big policy  
3 kind of matter that needs to be carefully thought through  
4 before we start inserting language to specific permits.

5 Because again, if that's the reasoning for this  
6 permit, that's going to be the reasoning for every other  
7 permit. And if that's the case, then we have to  
8 consistently start including language, so we don't open  
9 ourselves to that type of argument in the future.

10 LEGAL COUNSEL SMITH: That is a good point.  
11 That's something I hadn't thought of, but that is a good  
12 point.

13 BOARD MEMBER RIE: I mean don't we already have a  
14 condition that addresses that if we have a change in the  
15 plan of flood control, we can ask the applicant to remove  
16 their encroachment?

17 LEGAL COUNSEL SMITH: That is what Condition  
18 Eighteen currently says.

19 SENIOR ENGINEER BUTLER: Their costs.

20 SECRETARY HODGKINS: The difference, in my mind,  
21 was, if you look at Bear Creek, there we, in effect, may  
22 have a change in the standard that is requiring  
23 encroachments to be modified. Here, we're in the process  
24 of developing a plan in an area where we know we have a  
25 shortfall, and at least I would think that a logical way

1 of addressing that shortfall might be to take advantage of  
2 the hydraulic capacity that's available in the deepwater  
3 ship channel.

4           It's not a done deal yet, but you look at the  
5 Yolo Bypass and figure out how -- in any case, I want the;  
6 applicant to be aware of the fact that within the next 10  
7 to 20 years, we could be reclaiming this as part of the  
8 Yolo Bypass. And I think that's different than saying, we  
9 may change our standards or we may subsequently find that  
10 there are other modifications necessary to the flood  
11 control system. I think the difference, in my mind, here  
12 is that we have an identified shortfall in capacity that I  
13 think has to be addressed.

14           But I understand Ms. Suarez's concern. And  
15 rather than hold this up, I mean I guess, to some extent,  
16 we've put them on notice by the discussion in this  
17 hearing, which is part of the official record. And if  
18 it's a real problem, I'm willing to withdraw the motion.

19           PRESIDENT CARTER: Well, I guess the question --  
20 we don't know if it's a real problem.

21           SECRETARY HODGKINS: We don't.

22           PRESIDENT CARTER: So are you withdrawing your  
23 motion or are you letting it stand?

24           SECRETARY HODGKINS: No, I'll withdraw it.

25           PRESIDENT CARTER: You'll withdraw it.



1           Okay, so ladies and gentlemen, what's your --

2           BOARD MEMBER BROWN: The second is okay with the  
3 withdrawal.

4           PRESIDENT CARTER: Okay, so we do not have a  
5 motion before us.

6           BOARD MEMBER BROWN: We just withdraw the  
7 addendum to Eighteen, I guess.

8           SECRETARY HODGKINS: That's correct.

9           PRESIDENT CARTER: He just withdrew the addendum  
10 to Eighteen. And you did make a motion to adopt the  
11 permit as presented with the --

12          PRESIDENT CARTER: Okay, I misunderstood. I  
13 thought you withdrew your entire motion. You're  
14 withdrawing your modification to the permit?

15          SECRETARY HODGKINS: I actually was withdrawing  
16 my entire motion. I have no problem with replacing it  
17 with a motion to approve staff's recommendation.

18          PRESIDENT CARTER: So you are moving to approve  
19 Permit number 18596 as recommended by staff in the staff  
20 report, is that correct?

21          SECRETARY HODGKINS: That's correct.

22          PRESIDENT CARTER: Okay, do we have a second on  
23 that?

24          BOARD MEMBER BROWN: I second that.

25          PRESIDENT CARTER: Okay, we have a second.

1 Any further discussion?

2 BOARD MEMBER RIE: I have a question. The permit  
3 says that this permit is conditional on a Corps letter,  
4 but there wasn't a Corps letter attached. Did we get  
5 that?

6 SUPERVISING ENGINEER PORBAHA: Not yet.

7 PRESIDENT CARTER: This was one of the four that  
8 was not -- did not have a Corps letter on the Consent  
9 Calendar.

10 BOARD MEMBER RIE: Do we know if the Corps has  
11 any concerns with this project?

12 MS. NAGY: This is Meegan Nagy with the Corps of  
13 Engineers. Our geotechnical review is complete and our  
14 operations and maintenance review is complete. And the  
15 applicant has addressed all of our concerns as it relates  
16 to that. We're just wrapping up any questions that our  
17 hydraulic engineers has.

18 And I haven't had an opportunity to talk  
19 specifics with her. But right now, I don't foresee any  
20 issues.

21 BOARD MEMBER RIE: Thank you.

22 MS. NAGY: You're welcome.

23 PRESIDENT CARTER: Any other questions?

24 All right, I assume staff doesn't have any  
25 comments with respect to the Board's proposed action?

1 SUPERVISING ENGINEER PORBAHA: No comments.

2 PRESIDENT CARTER: Okay. And the applicant?

3 MR. SCHEELER: No comments.

4 PRESIDENT CARTER: No comments.

5 Any other questions or comments from the Board?

6 BOARD MEMBER SUAREZ: My only comment would be  
7 that Mr. Hodgkins has raised a very important issue that  
8 we better start addressing soon, but that could be for a  
9 discussion for future agenda items.

10 PRESIDENT CARTER: Okay. Mr. Punia, would you  
11 call the roll, please.

12 EXECUTIVE OFFICER PUNIA: Board Member John  
13 Brown?

14 BOARD MEMBER BROWN: Aye.

15 EXECUTIVE OFFICER PUNIA: Board Member Emma  
16 Suarez?

17 BOARD MEMBER SUAREZ: Aye.

18 EXECUTIVE OFFICER PUNIA: Board Member Butch  
19 Hodgkins?

20 SECRETARY HODGKINS: Aye.

21 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

22 BOARD MEMBER RIE: Aye.

23 EXECUTIVE OFFICER PUNIA: Board President Ben  
24 Carter?

25 PRESIDENT CARTER: Aye.

1           Motion carries unanimously. Thank you very much  
2 ladies and gentlemen. This hearing is adjourned.

3           We will take a 45-minute lunch recess and we'll  
4 be back here at 1:15.

5           (Thereupon a lunch break was taken.)  
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AFTERNOON SESSION

PRESIDENT CARTER: Good afternoon, ladies and gentlemen. I'd like to welcome you back to the Central Valley Flood Protection Board meeting for August. We are on Item 11. This is a policy discussion. It's a review of the Board's encroachment and enforcement hearing process.

As everyone knows, we've had a trial run at an enforcement hearing. And we had some limited and a learning experience with respect to that.

I asked our staff, namely Mr. Fua and Ms. Smith, to pull together some general guidelines to help clarify the process. The intent of this was essentially to try and avoid any confusion in the future as we go through and enforcement -- an encroachment enforcement hearing process on the part of the Board, the staff, or the respondents with respect to that.

And so that the intent of this is really to avoid any confusion, such as the confusion that we had in our first experience through this.

As everyone also knows that this Board is nearly 100 years old, has never utilized the enforcement hearing process. And so this is a new process, an untested process for this Board in its hundred year history.

So with that, I'm going to let Mr. Fua and Ms.

1 Smith go through a brief description of what they've  
2 developed. My hope is that the Board can have an open  
3 discussion. We invite members of the public to  
4 participate in this and provide comment. And that  
5 the -- at the end of the discussion, we'll have some  
6 instrument that -- or some way forward to proceed with  
7 enforcements, which are a significant issue with respect  
8 to the system that we are charged with maintaining and  
9 operating.

10 So with that, Ms. Smith.

11 LEGAL COUNSEL SMITH: Thank you, Mr. President  
12 and members of the Board.

13 (Thereupon an overhead presentation was  
14 Presented as follows.)

15 LEGAL COUNSEL SMITH: In your Board packets and  
16 also posted on the website, you should have received a  
17 summary, a three-page document that's titled Central  
18 Valley Flood Protection Board Enforcement Proceedings  
19 Pursuant to Title 23.

20 There was a slightly revised version that added  
21 one additional paragraph that is in red-line that was  
22 Emailed to you, I believe, two days ago and was also  
23 posted on the website. So if anyone needs a copy of the  
24 revised version, let us know.

25 I believe that Lorraine was going to make some

1 extra copies if you need a copy.

2 BOARD MEMBER RIE: I need a copy.

3 EXECUTIVE OFFICER PUNIA: Amber, Teri needs a  
4 copy.

5 LEGAL COUNSEL SMITH: My intent is to do a quick  
6 PowerPoint presentation to go over -- to summarize for you  
7 basically what's in this document and also to field  
8 questions. The first thing I'd like to point out before I  
9 do so is that this is a summary of the current regulations  
10 pursuant to Title 23 dealing with enforcement, which are  
11 found in Sections 20 through 23 -- or I'm sorry, 20  
12 through 22 of the Board's regulations. That's the limit  
13 of this discussion and this document.

14 PRESIDENT CARTER: So specifically the intent  
15 here is to -- we're trying to avoid establishing any  
16 underground regulations. So it really is a reflection of  
17 what is there in existence and a clarification of what  
18 that is.

19 LEGAL COUNSEL SMITH: And as everyone on the  
20 Board is aware, we're in the process of drafting Tier 1B  
21 regulations, which will address the new enforcement  
22 authority that the Water Code has given the Board. That's  
23 a separate issue, and we're in the process of doing that.

24 But this deals strictly with what the enforcement  
25 regs currently say. So with that, on the first slide, it

1 deals with the initiation of an Enforcement Action under  
2 the regs.

3 --o0o--

4 LEGAL COUNSEL SMITH: The Executive Officer  
5 initiates an Enforcement Action by serving a notice by  
6 certified mail stating the acts or omissions that the  
7 Board can -- enforcement staff contends are in violation  
8 of Division, meaning Title 23, or that threaten the  
9 successful execution, functioning, or operation of an  
10 adopted plan of flood control as defined in the regs.

11 And Section 20 of the regulations goes into  
12 pretty great detail as to what needs to be in the notice,  
13 how the notice shall be served, et cetera.

14 Other interested parties may become parties to  
15 the Enforcement Action by filing a notice with the Board  
16 to that effect. The respondent then, after the notice  
17 goes out, has 30 days to request a hearing. And if they  
18 don't do so within that time, their right to a hearing is  
19 waived.

20 The respondent can request copies of documents  
21 that are relevant to the proceedings and that aren't  
22 exempt under the Public Records Act. And the Board may  
23 charge a reasonable fee to make copies of those documents.

24 --o0o--

25 LEGAL COUNSEL SMITH: The next slide discusses



1 the hearing process. Under the regs and under the Water  
2 Code, a full or partial hearing may be held before the  
3 full Board or committee meeting, one or more members of  
4 the Board. All hearings must be open to the public. If  
5 the hearing is going to be held before a committee, in  
6 other words not before the full Board, the President will  
7 appoint the hearing officer who will be charged with  
8 preparing a record of evidence and a proposed decision to  
9 bring back to the Board at a subsequent date.

10 Written notice of the hearing and a copy of the  
11 staff report or recommendation by the staff shall be  
12 provided to the respondent at least 10 days prior to the  
13 enforcement hearing. At the hearing, the Board  
14 enforcement staff presents evidence and the respondent  
15 will be given an opportunity to present and rebut evidence  
16 against them.

17 The Board President, acting chair, or appointed  
18 hearing officer, if there is one, has the authority to  
19 limit the manner and the presentation of evidence, such as  
20 maybe putting time limits on, as well as place any other  
21 controls as appropriate to the proceeding.

22 --o0o--

23 LEGAL COUNSEL SMITH: And the next slide  
24 addresses the decision of the Board. After the conclusion  
25 of the hearing, and all evidence has been taken, the Board

1 issues a decision in writing, based upon the record, and  
2 setting forth the factual and legal basis for the  
3 decision.

4           There's actually a specific section, Section 22,  
5 that discusses what the order shall say and gives the  
6 different options, including but not limited to the action  
7 may require the respondent to remove the work, alter the  
8 work, perform additional work, implement specified  
9 mitigation, comply with additional reasonable conditions,  
10 file an application or revoke the permit.

11           If there is a hearing officer appointed, the  
12 hearing officer prepares a proposed decision within 30  
13 days after the conclusion of the hearing, and the Board  
14 considers that proposed decision at the next regularly  
15 scheduled Board meeting after the decision is issued, the  
16 proposed decision.

17                               --o0o--

18           LEGAL COUNSEL SMITH: The paragraph that was  
19 added in the revised copy of this three-page summary  
20 addresses a -- just puts the public and respondents on  
21 notice that if they believe that there are additional  
22 procedures or additional regulations that they believe  
23 apply to their proceeding, that they have the opportunity  
24 to let enforcement staff know in advance of the hearing,  
25 so that that can be taken into consideration.

1           And finally, after the decision has been  
2 rendered, there is an opportunity for the respondent to  
3 seek reconsideration under Section 23 of the regulations,  
4 which sets out specifically what bases the respondent can  
5 seek reconsideration.

6           And that is a general summary of what is  
7 contained in this three-page document. I worked with  
8 staff to come up with a document that we thought, in a  
9 clear manner, summarized what the process is in the regs  
10 and is something that can be put on the website and handed  
11 out to respondents, so that they're aware of the process.

12           And I'm happy to answer any questions.

13           PRESIDENT CARTER: So one potential use for this,  
14 and actually the intended -- one intended use for this is  
15 to include this in the correspondence to respondents with  
16 respect to enforcement -- encroachment enforcement  
17 proceedings. So this would be part of the notification  
18 process. When the letters go out to the parties involved,  
19 this would be included. And it would be included for the  
20 purposes of clarifying the process and their rights and  
21 obligations with respect to the process.

22           BOARD MEMBER BROWN: The reconsideration is at  
23 the pleasure of the Board though, correct?

24           LEGAL COUNSEL SMITH: I believe it is. And there  
25 are very limited -- under Section 23, there are limited

1 reasons. For example, I believe that it has to be that  
2 there's new evidence that -- well, it says any  
3 irregularity in the proceeding. Yeah, so they may  
4 petition the Board. I don't believe the Board has any  
5 obligation to reconsider.

6 BOARD MEMBER BROWN: So it's at their pleasure.

7 LEGAL COUNSEL SMITH: I believe so. Let me just  
8 read through this real quick. If it doesn't meet the  
9 criteria set forth in Section 23, the Board may refuse to  
10 reconsider the decision at all.

11 BOARD MEMBER BROWN: Good idea, Mr. Chairman.

12 PRESIDENT CARTER: Okay. Any other comments,  
13 questions?

14 Ms. Suarez.

15 BOARD MEMBER SUAREZ: Mr. President, I want to  
16 take this opportunity to thank Ms. Smith, Mr. Fua, the  
17 rest of the staff that's worked very hard on this  
18 document. I certainly was a person that had had some  
19 concerns about how well-informed the -- some folks that  
20 have been facing enforcement procedures were. And  
21 given -- and how hard this Board had worked to make sure  
22 that they were as informed as possible in order for our  
23 conscious, so to speak, be clear, and we all be  
24 comfortable with the process.

25 So too me, this is such an important document.

1 And I appreciate the effort and the work that will proceed  
2 as you will include this in packages and get the  
3 information out to the affected parties.

4 I especially want to thank the President, Mr.  
5 Carter, who's put up with many of our -- my concerns  
6 regarding the process, very patiently, and took the  
7 leadership to work with staff to get this document put  
8 together, and direct staff about what to do with the  
9 document. So I personally wanted to thank him for being  
10 patient and working through this. I think we're there,  
11 and I'm very appreciative.

12 PRESIDENT CARTER: If I can just highlight a  
13 couple things that I think are really important for the  
14 Board and staff as we move forward. This Section A of  
15 this little three-pager talks about initiation and notice  
16 of interested parties. In the discussion in developing  
17 this, one point was brought out, I think it was by Ms.  
18 Suarez, that the implementation and execution of the  
19 notification process must be complete and consistent  
20 throughout all the parties involved and all the  
21 Enforcement Actions that we carry out.

22 So it's important that we follow the requirements  
23 of Section 20, and in addition, make every effort to  
24 respond to the respondents and their questions and help  
25 them through this process. It is a new process. We want

1   them to go into it and move through it with as much  
2   information as we can provide them.

3           And including this will help us in that regard,  
4   but is not a substitute for carefully listening to their  
5   concerns, as well as the Board's concerns and responding  
6   to those in a timely fashion. So that's one important  
7   thing.

8           There was also a question that came up with  
9   respect to and Mr. Fua brought this issue up, in terms of  
10  there are two paths that we can take. One is we hear  
11  encroachments -- we hear an Enforcement Action as an  
12  entire Board or we designate a hearing officer to hear the  
13  Enforcement Action, hear the evidence, prepare a proposed  
14  decision.

15          The question that came up was can the Board make  
16  a decision -- if the Board hears -- the full Board hears  
17  the Enforcement Action, can the Board make a decision at  
18  the conclusion of that hearing effectively on the same  
19  day.

20          And Ms. Smith maybe you want to advise us on  
21  that. I know we had this discussion. There were some  
22  questions. But I think you've done some research and  
23  maybe have some recommendations.

24          LEGAL COUNSEL SMITH: I think it's theoretically  
25  possible that the Board could, but the difficulty is that

1 the Board has to make a decision in writing that sets  
2 forth the legal basis and the factual findings of that  
3 decision. And those findings need to be done pretty much  
4 at the same time the decision is made.

5 So it would probably be difficult to do that as a  
6 practical matter on the same day that you vote on the  
7 decision, unless there's been a very detailed proposed  
8 decision or findings drafted by enforcement staff that are  
9 comprehensive and that the Board feels comfortable  
10 adopting or adopting and directing certain changes be  
11 added and brought back at the next subsequent meeting.

12 But as a practical matter, we typically won't  
13 know what the other -- what the respondent's evidence is  
14 going to be until the actual hearing day. So it would be,  
15 in my opinion, probably difficult to pull those findings  
16 together on the day of the hearing in most cases.

17 And as an example, the Coastal Commission, they  
18 do -- they typically do make their decisions on  
19 enforcement matters on the same day that they hear them.  
20 However, in their regulations, they require the  
21 respondents to provide a statement of defense in advance,  
22 so their enforcement staff has an opportunity to  
23 incorporate the Respondent's evidence into their proposed  
24 findings and decision prior to the hearing.

25 We don't have a regulation that requires that. I

1 suppose on a case-by-case basis staff could ask for that,  
2 but there's nothing in our regulations requiring that they  
3 comply. So to me, I think it's theoretically possible. I  
4 would like to see the Board be able to do that obviously.  
5 But legally, I think it would be difficult to be able to  
6 make a decision and have findings on the same day as the  
7 hearing.

8           PRESIDENT CARTER: So with respect to that, we're  
9 not completely eliminating the possibility of potentially  
10 making a decision the same day. It is really a function  
11 of how the hearing goes, what kind of new evidence -- or  
12 what kind of evidence we hear, and whether or not -- I  
13 mean, it's conceivable where we have a relatively  
14 straightforward process, a straightforward hearing,  
15 perhaps there's no evidence, and written findings can be  
16 generated in that same day, and a decision can be made.

17           But as Ms. Smith says, that would be probably the  
18 exception rather than the rule. And so the process would  
19 be, more than likely, conducting the enforcement hearing.  
20 Then staff going back and presenting -- or preparing  
21 written findings and a recommendation for a proposed  
22 decision by the Board. And that coming back to the Board  
23 in the next meeting or a subsequent meeting for  
24 consideration and action by the Board.

25           BOARD MEMBER BROWN: I think that's what we



1 should plan on.

2 PRESIDENT CARTER: And I think you're right,  
3 that's what we should plan on. But there may be an  
4 exception to that where we're able to take action that  
5 day. And it's not the Board's intent to slow the process  
6 down. We want to move through these things, but we need  
7 to follow our due process. So it will be an exception  
8 rather than probably the general practice.

9 BOARD MEMBER RIE: Would it be okay to vote on a  
10 tentative decision, and then the written findings could be  
11 based on the tentative decision, just so everyone has an  
12 idea, including the people who are preparing the findings,  
13 as to what direction the Board is going in? Is there any  
14 problem with that?

15 PRESIDENT CARTER: If you were to vote on a  
16 tentative decision, are you saying that then the  
17 Board -- that would be the final decision of the Board?

18 BOARD MEMBER RIE: No, it would be a tentative  
19 decision.

20 PRESIDENT CARTER: So I guess my question is  
21 what's the difference -- I think it's okay to have a  
22 discussion as part of the hearing under deliberations.  
23 And everyone's going to get a flavor of kind of what the  
24 Board is thinking about, and perhaps where it is headed.  
25 And if it's a tentative decision, the decision is going to

1 be based on written findings the subsequent month. So  
2 we're going to be generating that anyway. So I don't know  
3 if we need to vote on a tentative decision. We're going  
4 to signal that anyway, I believe in the discussion, aren't  
5 we?

6 BOARD MEMBER RIE: Well, I think the advantage to  
7 that is whoever the respondent is has an idea of what the  
8 Board is thinking. And then at the next hearing, they can  
9 prepare their defense based on that tentative decision.

10 PRESIDENT CARTER: And that brings up a good  
11 point. I mean, if we have closed the hearing and we've  
12 deliberated, their defense is done, unless there's new  
13 evidence.

14 And opening up the hearing again is entirely at  
15 the discretion of the Board or the hearing officer. So I  
16 don't know why we -- why they would be preparing a new  
17 defense. They should be prepared to present their defense  
18 on that day of that hearing. And that's why we're giving  
19 them this, and that's why we're putting people on notice.  
20 We don't want to continue this process ad nauseam.

21 So we want people to come prepared. We want them  
22 to come into this process with their eyes wide open,  
23 knowing what the expectation is, so that they can deliver  
24 on that expectation to the best of their ability, and the  
25 Board can move on.

1           And I think that we can accomplish what you'd  
2 like to do, Teri, through the deliberation discussion,  
3 because the Board will deliberate and the Board will be  
4 asking questions, the Board will be soliciting feedback.  
5 Potentially, the Board may even ask the respondent and the  
6 staff how they feel about the way the Board's headed. And  
7 I think that's all fair game.

8           BOARD MEMBER RIE: Well, is it okay for us to,  
9 when we signal what our decision is going to be, is it  
10 okay for us to state that we plan to vote this way or that  
11 way?

12           BOARD MEMBER SUAREZ: Sure.

13           PRESIDENT CARTER: I don't know that there's -- I  
14 mean, is there anything legally that says that you can't  
15 do that?

16           BOARD MEMBER BROWN: Yeah, I don't think you want  
17 to forecast that until you've had maybe a good chance to  
18 digest the evidence. You've got 30 days to come up with a  
19 decision after the hearing?

20           PRESIDENT CARTER: You've got 30 days to -- well,  
21 written findings are to be prepared within 30 days, and  
22 then made available to the public, the respondent, the  
23 Board, the staff. And then the Board is to consider that  
24 at the next scheduled meeting after those findings have  
25 been generated.

1 BOARD MEMBER SUAREZ: Mr. President.

2 If I just may suggest, remember what the decision  
3 is, to enforce -- to do an Enforcement Action or not.

4 I mean, that's the discussion we're going to  
5 have. Are we going to proceed with the Enforcement Action  
6 or are we not?

7 If we decide not, then that's the end of the  
8 discussion. And we can take a vote right at that point,  
9 we're not going to take an action. There's no need for a  
10 record or findings or anything else. If we take a vote  
11 and say we are going to proceed with an Enforcement  
12 Action, please prepare an order and bring it back to us,  
13 that's the direction. And then, at that point, we take a  
14 vote on that final order.

15 But the actual decisions that we're making is a  
16 pretty straightforward enforcement item for us. If we're  
17 not enforcing, end of story. There's no need for anything  
18 else. If we're enforcing, then what we need is a draft  
19 order that we can adopt at the following meeting.

20 BOARD MEMBER RIE: Ms. Suarez, if we're going to  
21 go with the enforcement, do we need to vote to start the  
22 enforcement?

23 BOARD MEMBER SUAREZ: We need to indicate to  
24 staff that they need to put together an enforcement order  
25 for us to consider based on the findings.

1           BOARD MEMBER RIE: Is that something we can just  
2 tell them to do or do we need to vote on that?

3           LEGAL COUNSEL SMITH: I have to admit, I'm a  
4 little lost in this part of the conversation. But the  
5 staff would be coming with a recommendation and with  
6 presumably a proposed order of what staff believes the  
7 Board should adopt.

8           BOARD MEMBER RIE: Okay, so the staff makes a  
9 recommendation. Is that something we need to vote on  
10 whether we're going to go with enforcement or their  
11 recommendation or not?

12           LEGAL COUNSEL SMITH: That's absolutely what the  
13 Board would be deciding.

14           BOARD MEMBER RIE: But do we need to vote or do  
15 we just tell them to prepare the findings?

16           BOARD MEMBER SUAREZ: Well, we wouldn't be  
17 telling them to prepare the findings, unless we were going  
18 to move on with enforcement, because a decision of not  
19 moving with enforcement is the end of the discussion. We  
20 don't need to have findings not to act. We just need to  
21 have findings when we're going to act.

22           PRESIDENT CARTER: I think at the conclusion of  
23 the hearing, the Board needs to give staff direction as to  
24 whether or not they should prepare a record of findings  
25 and a proposed order.

1           And I guess, in my mind, that's the question or  
2 that's the action at the end. The question I have is  
3 whether or not the Board, through Consent does it or takes  
4 a motion and a vote on that. I don't know what the  
5 formalities of the process require as far as the hearing  
6 goes.

7           LEGAL COUNSEL SMITH: Well, if at the end, the  
8 Board -- it would be the most simple case obviously if the  
9 Board agrees with the staff recommendation, doesn't have  
10 much to add to the staff recommendation, they would just  
11 accept the staff recommendation. They would vote on that.  
12 That's the final decision.

13           But similar to what we do in some cases during  
14 permit hearings, sometimes the Board modifies the staff  
15 recommendation wants to do something different or based on  
16 a different reasoning than what's presented in the staff  
17 report.

18           The legal requirement is that you have findings  
19 that articulate what those reasons are, so that if someone  
20 wants to challenge your reasoning in court, they have a  
21 document that shows what that reasoning was, that can  
22 actually be challenged. That's what is required legally.  
23 I think what we're struggling with is how you do that as a  
24 practical matter.

25           BOARD MEMBER SUAREZ: Just bring it back.

1           BOARD MEMBER RIE: Well, my question is, okay, to  
2 start the enforcement proceedings, can the staff simply  
3 send out a letter and say we're starting enforcement or is  
4 that something that we need to vote on and have a  
5 quorum --

6           LEGAL COUNSEL SMITH: Oh, right. No.

7           BOARD MEMBER RIE: -- to have a favorable  
8 decision?

9           LEGAL COUNSEL SMITH: No, the regulations allow  
10 the Executive Officer to initiate enforcement on his  
11 own --

12          BOARD MEMBER RIE: Okay.

13          LEGAL COUNSEL SMITH: -- without Board approval.

14          BOARD MEMBER RIE: Okay. So once we have the  
15 first hearing and we deliberate whether we want to  
16 continue the enforcement hearing, do we need to vote again  
17 to move forward with preparing findings?

18          BOARD MEMBER SUAREZ: Yes. We have to  
19 affirmatively tell the staff that they have to come back  
20 with something for us to finally approve, whether it's a  
21 voter, whether it's a unanimously, you know, nobody has  
22 any disagreement.

23                 If we're going to move forward with the  
24 Enforcement Action, we have to, as a Board, direct the  
25 staff to come back, because during the hearing, as Ms.

1 Smith is saying, there's going to be information that  
2 needs to be added to the findings that we otherwise  
3 wouldn't have prior to the hearing. We incorporate that  
4 information. It comes back to us, and then we make a  
5 final approval of the order.

6 LEGAL COUNSEL SMITH: Absolutely.

7 BOARD MEMBER RIE: Thank you.

8 SECRETARY HODGKINS: Yeah, I'm confused, which is  
9 not unusual. But the General Manager decides to pursue  
10 enforcement. Okay, so staff then notifies the applicant;  
11 is that correct?

12 LEGAL COUNSEL SMITH: Correct.

13 SECRETARY HODGKINS: And the applicant presumably  
14 gets something like the summary we have here, so he  
15 understands the process, okay.

16 BOARD MEMBER SUAREZ: He gets this summary. Not  
17 something like, he gets this summary.

18 SECRETARY HODGKINS: Okay, thank you. Thank you.

19 We then hold a hearing. Now, in that hearing, is  
20 staff making a recommendation to us on enforcement?

21 LEGAL COUNSEL SMITH: Yes.

22 SECRETARY HODGKINS: So even though they have not  
23 heard or we have not heard the evidence submitted on the  
24 part of the respondent, they put together a  
25 recommendation?



1           LEGAL COUNSEL SMITH:   Yes.

2           SECRETARY HODGKINS:   Okay.   So then the Board  
3 basically is, in that hearing, listening to staff,  
4 listening to the respondent, looking at those  
5 recommendations and deciding whether those needed to be  
6 modified in some way before the Board would consider  
7 adopting them?

8           LEGAL COUNSEL SMITH:   Yes.

9           SECRETARY HODGKINS:   And presumably, we give that  
10 information back to staff.  They go off.  Does it have to  
11 be 30 days?  I mean, they --

12          LEGAL COUNSEL SMITH:   No.

13          SECRETARY HODGKINS:   It could be less than 30  
14 days?  It could be the next Board meeting, if we wanted  
15 to, if this is full Board.

16          LEGAL COUNSEL SMITH:   Right, if that were  
17 sufficient time to --

18          SECRETARY HODGKINS:   So they, in essence, should  
19 come back with the modified order and findings at the next  
20 Board, at which case the respondent knew what the first  
21 recommendation is, so he should have been able to submit  
22 all of his evidence in response to whatever staff is  
23 claiming at that first hearing.  There shouldn't be  
24 anything new.

25          BOARD MEMBER SUAREZ:   Well --

1           SECRETARY HODGKINS: So I think that process  
2 makes sense to me. Because we are then working with a  
3 recommendation at that hearing and deciding whether --  
4 what parts of the recommendation we might consider  
5 adopting as an Enforcement Action, and what we wouldn't.

6           That makes sense to me. Does that make sense to  
7 everybody else?

8           BOARD MEMBER SUAREZ: Yes. And just recall that  
9 there's a reconsideration process for the respondent. If  
10 they're not happy with our decision, they can always ask  
11 us through a separate process, if they fit the criteria of  
12 now information, something inappropriate occurring during  
13 the hearing to come back to us and ask us to reconsider  
14 this.

15          SECRETARY HODGKINS: But can they, in  
16 reconsideration, submit new evidence? I'm trying to  
17 understand whether we are encouraging them to do  
18 everything you can think of to do in that first hearing or  
19 they have the ability to then come back with new evidence.

20          LEGAL COUNSEL SMITH: The reconsideration -- as  
21 far as new evidence goes, the respondent would be limited  
22 to only -- they could only present new evidence --  
23 relevant evidence that could not have reasonably been  
24 produced previously. So that's going to be a very  
25 limited --

1 SECRETARY HODGKINS: Okay.

2 BOARD MEMBER RIE: Okay, so the staff sends out a  
3 notice. And if the respondent doesn't agree, they can  
4 request a hearing. And it's that first hearing where they  
5 need to present all their evidence. And then that's when  
6 we're going to vote whether we're going to move forward  
7 with enforcement or not.

8 LEGAL COUNSEL SMITH: Yes.

9 BOARD MEMBER RIE: And then once we vote, then  
10 the findings will be prepared based on all the evidence at  
11 the first hearing. And then we come back to the second  
12 hearing and vote?

13 BOARD MEMBER SUAREZ: Reaffirm.

14 BOARD MEMBER RIE: Reaffirm.

15 BOARD MEMBER SUAREZ: We confirm that what we see  
16 is what we voted for initially.

17 BOARD MEMBER RIE: And it's that second hearing  
18 where they can't bring in new evidence and the hearing  
19 can't be reopened?

20 LEGAL COUNSEL SMITH: Well, it can, but if you do  
21 as President Carter stated, it might go on at ad nauseam.  
22 It's only at the discretion of the Chair.

23 (Laughter.)

24 BOARD MEMBER RIE: But if we open the hearing and  
25 we let one person talk or present evidence, then we're

1 essentially reopening the entire hearing.

2 BOARD MEMBER BROWN: Mr. President.

3 PRESIDENT CARTER: Mr. Brown.

4 BOARD MEMBER BROWN: Two things. One is that you  
5 have direct that's presented, and then you can rebuttal  
6 the direct. And then you have redirect and rebuttal. And  
7 each time you do that, the rebuttal then is just on the  
8 evidence that is presented itself. It doesn't bring in  
9 new evidence. That's one thing in the process itself.

10 The other thing that Butch and I found out  
11 yesterday when we met with the State Water Resources  
12 Control Board, is on the bifurcation of staff, Mr.  
13 Chairman, is that the parties that's bringing the legal  
14 notices -- or the staff that's bringing legal notice of  
15 the problem becomes a party. And last time what we did,  
16 very properly so, was that we bifurcated our staff, such  
17 that they kept the Board independent of the party  
18 presenting the evidence.

19 The State Board has loosened up on that  
20 requirement a little bit, according to our discussion  
21 yesterday. We may have Debbie to look into that to see if  
22 that is really a problem with us now. I think the rules  
23 have changed a little bit with the Water Board. And it  
24 might affect us to where we would not have to bifurcate  
25 our staff, Ms. Smith.

1           BOARD MEMBER RIE: Mr. Brown, you bring up a  
2 rebuttal aspect.

3           BOARD MEMBER BROWN: Yes.

4           BOARD MEMBER RIE: Is that in our regulations or  
5 does that come out of the Administrative Procedures Act?

6           BOARD MEMBER BROWN: Well, ask counsel on the  
7 end.

8           DWR ASSISTANT CHIEF COUNSEL TABOR: I could  
9 address that point, if you'd like.

10          BOARD MEMBER RIE: Sure, thank you.

11          DWR ASSISTANT CHIEF COUNSEL TABOR: Ward Tabor,  
12 Department of Water Resources. I think I've got three  
13 points I need to remember to address now. But on your  
14 point, the exact way the hearing is conducted is not in  
15 this paper, because it's not really covered by your  
16 regulations.

17          But prior to the Ross enforcement proceeding, we  
18 did develop a schedule or an agenda, if you will, for how  
19 that hearing was going to transpire. And it essentially  
20 follows the traditional permit approach that you use.

21          Your staff puts on its case. The applicant puts  
22 on their case. Interested parties are allowed to present  
23 their evidence. Staff comes back with any additional  
24 evidence they may want to rebut what the respondent  
25 presented. And then the respondent has the opportunity to

1 present other evidence in response to what staff has  
2 brought up.

3 And it might be a good idea to add that part into  
4 this procedure, so it gives a respondent, as well as  
5 staff, a clear picture as to what to expect at the hearing  
6 process.

7 BOARD MEMBER RIE: But you said that's not in  
8 Title 23?

9 DWR ASSISTANT CHIEF COUNSEL TABOR: It is not  
10 Title 23, but it's your Board's procedure, which is not  
11 adopted as a regulation anyway. It's just the way you  
12 conduct your hearings. And so we wanted --

13 BOARD MEMBER RIE: Is there something similar in  
14 the Administrative Procedures Act that follows that same  
15 logic?

16 DWR ASSISTANT CHIEF COUNSEL TABOR: Ms. Smith  
17 kind of summarizes what the Administrative Procedure Act  
18 requires of a hearing. And it doesn't go into the kind of  
19 detail that this Board, in fact, uses as a standard  
20 practice to allow both staff and applicants or respondents  
21 in whatever case it may be, to have a full opportunity to  
22 present their case and to rebut whatever the other party  
23 may be bringing up.

24 BOARD MEMBER BROWN: I think it brings a good  
25 deal of order in the hearing where you have direct,

1 redirect, and then rebuttal. And then the rebuttal is  
2 limited to the additional evidence that was presented in  
3 redirect.

4 DWR ASSISTANT CHIEF COUNSEL TABOR: It certainly  
5 should be, yes, sir.

6 BOARD MEMBER BROWN: And that really brings order  
7 into it, where they're not bringing in -- you know, they  
8 think of something else after they've given their direct,  
9 but nobody else has brought up the issue, then that's not  
10 allowable in rebuttal.

11 BOARD MEMBER RIE: Mr. Brown, what does the Water  
12 Board have? Do they have that sort of order in their  
13 regulations?

14 BOARD MEMBER BROWN: Very precisely, uh-huh.  
15 Yes, they do.

16 BOARD MEMBER RIE: That seems like --

17 BOARD MEMBER BROWN: And the hearing officer --

18 BOARD MEMBER RIE: -- that would be helpful.

19 BOARD MEMBER BROWN: And the hearing officer  
20 makes sure that it's limited -- if it's rebuttal, that  
21 it's limited to evidence that was presented by the  
22 opposing party.

23 DWR ASSISTANT CHIEF COUNSEL TABOR: And these may  
24 well be items that as you proceed with your next round of  
25 rule making, you want to -- you may want to be specific as

1 to those sorts of processes.

2 Another point I wanted to mention is, you know,  
3 when the Board is conducting its initial hearing on an  
4 Enforcement Action, that's the opportunity for both the  
5 staff and the respondent to present their factual case as  
6 well as whatever legal arguments that they may have.

7 Once there is a proposed decision that's back  
8 before you again, in most cases there shouldn't be any new  
9 evidence. And even though people are addressing the  
10 Board, like I am now, I'm not -- I'm just arguing. I'm  
11 just arguing what the record already shows. I'm not  
12 trying to submit new information.

13 But once again, who's ever conducting the hearing  
14 needs to be vigilant to not allow new evidence to come in,  
15 unless it fits one of the unique requirements for  
16 reconsideration or might otherwise be available.

17 So what goes on in that second meeting, not  
18 really a hearing, but a meeting, is just argument about  
19 whether or not this is the right remedy that should come  
20 out of what the facts and the arguments from the hearing,  
21 in fact, showed.

22 The other point I wanted to mention is we talked  
23 about two rounds of voting. And that's not what this  
24 procedure talks about. And so there's -- the regulations  
25 were intended for the use of a hearing officer. That was



1 the whole idea behind it, because that's the standard  
2 approach in State agencies that they use a hearing officer  
3 in an enforcement proceeding.

4 It wasn't really fully contemplated that the full  
5 Board would be the hearing officer. There's nothing wrong  
6 with doing that. Don't get me wrong. But they were  
7 written in a way to address the situation where you had a  
8 hearing officer who conducted the hearing and obviously  
9 would be the most logical person then to prepare the  
10 proposed decision for the Board's consideration.

11 In the case where the Board wants to hold the  
12 hearing in front of the whole board, that's fine. But  
13 clearly somebody needs to write a proposed decision if the  
14 Board wants to have a completed Enforcement Action.

15 It can be a Board Member, as Mr. Brown well  
16 served in the Ross proceeding, or it could be a member of  
17 staff that could prepare that proposed decision. And, in  
18 fact, you could ask your staff to have a proposed decision  
19 at the initial enforcement proceeding. It could have the  
20 potential flaws that Ms. Smith described, but it's  
21 certainly possible to do that.

22 In most cases likely will have to be modified,  
23 but it at least will give everybody an idea of where  
24 things may be going.

25 BOARD MEMBER RIE: Mr. Tabor.

1 DWR ASSISTANT CHIEF COUNSEL TABOR: But you know,  
2 you talked about a tentative decision -- just let me  
3 finish my point. You talked about a potential tentative  
4 decision. You know, your regulations don't provide for  
5 that. But clearly who is ever going to write the  
6 decision, needs to have some idea where the Board is  
7 going.

8 The provisions don't prohibit a vote -- an early  
9 vote. But I think as President Carter indicated, from the  
10 discussion, from the questioning, who's ever gotten tasked  
11 to write that proposed decision, probably has a pretty  
12 good idea where the Board wants to go.

13 SECRETARY HODGKINS: Well, is there -- I mean, if  
14 you're providing staff direction, aren't you going to go  
15 through -- I'm thinking back to Ross, was it, that had  
16 seven or eight items? Aren't you going to walk down  
17 through those. And how are you going to tell staff what  
18 to include and what not to include, if there isn't at  
19 least an indication from each and every Board member as to  
20 how they feel about each and every item? Does that make  
21 any sense?

22 BOARD MEMBER BROWN: Yes. And that's --

23 SECRETARY HODGKINS: And that may not be voting,  
24 but for practical purposes, if you're going to go around  
25 the table and find out where everybody is on each item,

1 which I think you need to do, it's practically the same as  
2 voting. Although, maybe it's not voting by regulation.

3 BOARD MEMBER BROWN: Well, if I may, Mr.  
4 Chairman.

5 PRESIDENT CARTER: Mr. Brown.

6 BOARD MEMBER BROWN: That's why it's kind of  
7 important to designate a hearing officer that's a member  
8 of the Board, that probably has that best kind of feel of  
9 anyone else in the house. And I think we had that  
10 feeling, as a for instance, in the Ross hearing as to what  
11 it was.

12 But regardless, whether we had the feeling or  
13 not, all Board members had a chance to criticize the draft  
14 decision that was coming down and their input was indeed  
15 included eventually.

16 SECRETARY HODGKINS: And they did do that, didn't  
17 they?

18 BOARD MEMBER BROWN: We did do that. So I like  
19 the idea of designating a hearing officer, even if we're  
20 all five or six, or whatever we are, are here, and even if  
21 Ben conducts the hearing, he appoints one of us as the  
22 responsible party to go on point with staff to develop the  
23 draft decision.

24 And then that draft decision is circulated  
25 amongst the other Board members for their critique and

1 then that's how we move forward.

2 SECRETARY HODGKINS: Okay. Well, we should  
3 finish this discussion, but I want to go back to redirect.  
4 I'm trying to understand, at what point does the  
5 respondent get the benefit of all of the information that  
6 staff has considered, and staff's conclusion. Does he get  
7 that when they submit that as part of the agenda process  
8 in the first hearing and then he's expected to respond and  
9 is expected to develop his contravening arguments on that  
10 in the time from when the staff report hits the  
11 agenda -- hits the Internet or -- I'm trying to understand  
12 how you avoid creating a situation where, in effect, staff  
13 is introducing evidence that the respondent hasn't seen at  
14 the hearing.

15 BOARD MEMBER BROWN: Well, you don't do that.  
16 The staff can't do that and the hearing officer and Board  
17 doesn't. Our decision is based upon the rules of  
18 evidence. If the evidence isn't presented at the hearing,  
19 then Board members or staff, or nobody else adds  
20 subsequent evidence.

21 SECRETARY HODGKINS: But I'm saying at the very  
22 first hearing, Curt brings -- Curt says we've done an  
23 engineering analysis that shows the retaining wall doesn't  
24 meet code for this, that, and the other. How long has the  
25 respondent had that information in order to put together

1 his rebuttal to whether or not the retaining wall does or  
2 doesn't meet code?

3 LEGAL COUNSEL SMITH: According to the  
4 regulations, Section 21(e) respondents and other parties  
5 shall be mailed a copy of any staff report or  
6 recommendations on the enforcement proceedings at least 10  
7 days prior to the hearing. So at a minimum 10 days. If  
8 the Board feels that's not enough time, they could  
9 continue the matter to allow more time.

10 DWR ASSISTANT CHIEF COUNSEL TABOR: But keep in  
11 mind, you know, by the time that the Executive Officer  
12 sends out a notice of initiation of enforcement hearing,  
13 the respondent should know that there's problems with the  
14 encroachment. And obviously in the case of these on Bear  
15 Creek, you had a whole two days of hearings on those. And  
16 so everybody knew what the issues were. You know, did  
17 they know everything that staff might introduce as  
18 evidence? No, but they had notice certainly of what the  
19 issues were.

20 And once again, you know, Ms. Smith was trying to  
21 summarize and recapsulize what this Board has already  
22 adopted by regulation.

23 BOARD MEMBER RIE: Mr. Tabor, at the second  
24 hearing, the respondent will already have the written  
25 decision. And then we were talking about, should we let

1   them have rebuttal. And you said they can argue. Well,  
2   how many people will be allowed to argue. Let's say you  
3   have 20 people who want to argue one way or another,  
4   should that be allowed?

5           DWR ASSISTANT CHIEF COUNSEL TABOR: I think your  
6   process, as well as the Bagley-Keene Act, requires the  
7   Board to listen to every person who has something to say  
8   about some matter with your ability to control the time  
9   and the duplication of comments, just like you did this  
10   morning with respect to the Dry Creek encroachment that  
11   was before you.

12           You know, if there's 100 people that want to talk  
13   about the Enforcement Action, then all 100 get to speak  
14   about Enforcement Action.

15           BOARD MEMBER BROWN: Which includes policy  
16   statements, not necessarily evidence. But policy  
17   statements really don't hold much water in the decision.  
18   It's the evidence that holds water.

19           DWR ASSISTANT CHIEF COUNSEL TABOR: Yeah. I  
20   think it's important at that second hearing for the  
21   hearing officer who's ever going to conduct the hearing --

22           PRESIDENT CARTER: We're not having a second  
23   hearing. We have a hearing.

24           DWR ASSISTANT CHIEF COUNSEL TABOR: A the second  
25   meeting.

1           PRESIDENT CARTER: We have a meeting to come back  
2 and consider the proposed decision and record of findings.

3           DWR ASSISTANT CHIEF COUNSEL TABOR: Thank you for  
4 correcting me. You're right.

5           PRESIDENT CARTER: We're not opening up another  
6 hearing, the second time around. We're back considering  
7 the proposed decision and findings and record.

8           DWR ASSISTANT CHIEF COUNSEL TABOR: So people  
9 then can talk about the evidence that was introduced at  
10 the hearing, and they can argue about the appropriateness  
11 of the proceeding, the appropriateness of the remedy, the  
12 timing, conditions et cetera.

13          BOARD MEMBER RIE: Okay. So we'll close the  
14 hearing during the first meeting, and then the second  
15 meeting of the decision-making process, if 20 people want  
16 to speak, they can speak, but they can't present new  
17 evidence, but they can argue. Is that what you're saying?

18          DWR ASSISTANT CHIEF COUNSEL TABOR: Yes, ma'am.

19          BOARD MEMBER RIE: Okay.

20          LEGAL COUNSEL SMITH: And I think that staff  
21 needs to know that that includes staff. Staff shouldn't  
22 be producing new evidence once the hearing closed.

23          BOARD MEMBER RIE: Now what happens if someone  
24 presents some new evidence and it's one of the staff, does  
25 that then compromise the process because our staff has now

1 introduced new evidence? Now, the respondent can have  
2 addition a time or --

3 LEGAL COUNSEL SMITH: What I would recommend in  
4 that situation, this is where it gets into this at the  
5 discretion of the Board really. If the Board wants to  
6 reopen the hearing, they absolutely can. You know, if  
7 they feel they need more information, they can. That  
8 means they'll have more information to incorporate into  
9 their findings, which will take additional time.

10 But if you want to cut it off -- what would  
11 happen in a court of law, for example, is -- well,  
12 typically if someone tried to produce evidence during an  
13 argument, the other side would object.

14 DWR ASSISTANT CHIEF COUNSEL TABOR: Objection,  
15 your Honor.

16 LEGAL COUNSEL SMITH: Move to strike.

17 (Laughter.)

18 LEGAL COUNSEL SMITH: And the judge would say  
19 absolutely. This is not the time for new evidence, motion  
20 granted. I'll strike that from the record.

21 That's what would happen in a court of law.  
22 Obviously, this isn't a court of law, but what I would --  
23 if you want to prevent new evidence from coming in, and  
24 muddying the record, what I would recommend is that the  
25 Chair say this is not the time for new evidence. This is



1 the time for argument over evidence that's already been  
2 presented. So we will not be considering new evidence at  
3 this time.

4 BOARD MEMBER RIE: But if we're dealing with a  
5 homeowner encroachment -- if, you know, 20 homeowners want  
6 to come and argue, but not present new evidence, we need  
7 to allow that is what you're saying?

8 LEGAL COUNSEL SMITH: You can severely limit the  
9 time that they are allowed.

10 BOARD MEMBER RIE: But we can't preclude them  
11 from speaking. If they want to speak, we need to allow  
12 it, right, is that what you're saying?

13 Mr. Tabor?

14 LEGAL COUNSEL SMITH: I haven't specifically  
15 researched that issue, so I'll tentatively agree with Mr.  
16 Tabor on that.

17 DWR ASSISTANT CHIEF COUNSEL TABOR: If it's not  
18 specifically covered by Bagley-Keene, it's certainly this  
19 Board's practice to hear however many people want to talk  
20 about any particular agenda item, no matter what the  
21 agenda item is, whether it's an encroachment hearing,  
22 whether it's an agreement you may be considering, a real  
23 estate action.

24 PRESIDENT CARTER: So this is a very, very  
25 important discussion in all seriousness, just because I

1 think the time spent here is going to pay major dividends  
2 going down the road.

3           So I think it's important that we all understand  
4 where we're headed and where we want to go with this. But  
5 in the interests of time, are there any real specific  
6 questions or any points of confusion, at this point, that  
7 maybe we can work on to try and clarify?

8           My hope and expectation is that if we launch  
9 another one of these hearing processes on an enforcement,  
10 that we don't have -- that everyone knows where we're  
11 headed and nobody raises the question I'm confused. I  
12 don't know where we are. I don't know what we're doing.  
13 I don't know what this process is. That is the last thing  
14 we need when we're trying to establish a clear record.

15           BOARD MEMBER BROWN: I have one question, Mr.  
16 Chairman.

17           PRESIDENT CARTER: Go ahead.

18           BOARD MEMBER BROWN: You might check on the  
19 appropriateness or necessity of having to bifurcate our  
20 staff as long as we obviously are a party.

21           DWR ASSISTANT CHIEF COUNSEL TABOR: This is, I  
22 find to be, a confusing area of law. And we have two  
23 different appellate court decisions in the Morongo case,  
24 which affected the Board directly.

25           And after the first appellate court case, the

1 Board took a very extreme approach to bifurcating staff as  
2 a result of that decision.

3 When the Supreme Court ruled, while they upheld  
4 the decision, they also made some changes and  
5 clarifications to the law as a result of that. So you  
6 make a good point, and I'd be happy to work with Ms. Smith  
7 to have a clear understanding of that for the Board.

8 But I believe there's still an ongoing  
9 requirement to bifurcate staff. But I think the key  
10 difference in my recollection is that the original court  
11 said, if you once advise the Board on any matter, you can  
12 never then represent staff, and vice versa.

13 And the Supreme Court said no, no, no. You can  
14 advise the staff on one matter and advise the Board on  
15 another matter, as long as in a particular matter, you're  
16 not changing sides and being both the prosecutor as well  
17 as the judge or in support thereof.

18 LEGAL COUNSEL SMITH: That's very accurate.

19 BOARD MEMBER BROWN: The two of you give us a  
20 recommendation on whether to bifurcate or not.

21 DWR ASSISTANT CHIEF COUNSEL TABOR: Yes, sir.

22 SECRETARY HODGKINS: I think what the State Board  
23 folks said yesterday, is their attorneys aren't  
24 bifurcated. That's their organization. Their staff is  
25 not, but their practice is. A staff member never advises

1 the Board even at the same time. Although it's a  
2 different matter, he is advising the staff. That's what I  
3 heard, but it would bear clarification at least to  
4 understand.

5 But I do think there is a point here that staff  
6 has to recognize, which is, you know, in the case where  
7 there are technical issues that are going to retire  
8 potentially the respondent to hire an engineer, 10 days is  
9 not enough, I don't believe. I would listen to what  
10 others have to say, but I defy you to get an engineer and  
11 a report out of him in 10 days. It just isn't going to  
12 happen, especially not Corps people.

13 (Laughter.)

14 DWR ASSISTANT CHIEF COUNSEL TABOR: I agree, but  
15 as I said before, typically the notice has gone out to the  
16 respondent months before the hearing is scheduled. And so  
17 when they get the notice of the hearing with the staff  
18 report, it isn't the first time they know that they're  
19 being pursuing for an encroachment. You know, there's --  
20 and in most cases, they have some sort of notice even  
21 before they get that first notice from the Executive  
22 Officer.

23 So they should have, if they really wanted to  
24 fight it, and it's a serious matter, they will have wanted  
25 to retain both an engineer and an attorney at the time

1 they get that first notice. They shouldn't wait till they  
2 get the staff report, oh, I better get some help here, you  
3 know.

4 BOARD MEMBER SUAREZ: And, Mr. Tabor, if I can  
5 just read from the document Ms. Smith and the group put  
6 together, it's very -- the notice that goes out from the  
7 General Manager, there's obligations there when it comes  
8 to specifying what the problem is or areas of our laws or  
9 regulations that are being violated, and what is it the  
10 Executive Officer thinks that's in violation.

11 And furthermore, it requires for a respondent to  
12 come back within 30 days, so that the dialogue can begin.  
13 The 10-day is kind of the floor not the sealing, so to  
14 speak.

15 DWR ASSISTANT CHIEF COUNSEL TABOR: Yeah, the 20  
16 days is to see the specific evidence that the staff thinks  
17 proves their case. Could the time be longer? Absolutely.

18 PRESIDENT CARTER: Does somebody have a cell  
19 phone out there that they want to give to me.

20 MR. SHAPIRO: I'm trying to turn it off. I  
21 apologize. It's never gone off in this room before. I've  
22 never had reception before.

23 LEGAL COUNSEL SMITH: One thing that's worth  
24 mentioning, I think, is not to forget that the Board also  
25 has separate authority to bring civil lawsuits as well.

1 This is merely talking about the administrative  
2 enforcement procedure that's in the regulations.

3 PRESIDENT CARTER: Okay. So, Mr. Taras, did you  
4 want to say something to the Board?

5 SUPERVISING ENGINEER TARAS: This is Curt Taras,  
6 Chief of the Enforcement Branch.

7 Listening to the dialogue and it's all very  
8 beneficial, so that both staff and Board members have a  
9 clear understanding of how to carry on enforcement  
10 proceedings. As the Branch Chief, we are the staff that  
11 write the initial notice and order. And if you look at  
12 page one, where it says, "The notice must be accompanied  
13 by an order". And in that order, we wrote a lot of these  
14 rules into it. And this was submitted with our recent  
15 releases of our Enforcement Actions. And that order was  
16 sent to the respondents. The respondents have the  
17 opportunity then to request a hearing and then that order  
18 becomes up in front of you for a hearing with an attached  
19 staff report.

20 So that order might be the document that you're  
21 actually voting on, the Notice and Order that originally  
22 went to the respondent. And that creates a written record  
23 for a decision to satisfy the requirements for a written  
24 record, is just my suggestion there. We have been  
25 following these procedures. And there are written

1 documents that have been pre-noticed out for the  
2 respondent to have time to provide a response to.

3 Finally, in order -- in reading this and in  
4 looking at improvements to this procedure that we can make  
5 in future regulation revisions, looking to create a way  
6 for compliance. A lot of this procedure is driving the  
7 respondent to a hearing, rather than driving a solution.

8 And if you took a flowchart and took this policy  
9 and put it into a flowchart, you would see it all flows  
10 into a hearing, rather than having paths to solutions.  
11 And so that's what I'm trying to create, and I want us to  
12 always remember that, let's look for ways to achieve  
13 compliance through a solution that doesn't necessarily  
14 require a hearing.

15 That's all I have.

16 PRESIDENT CARTER: I think those are good  
17 discussions. Those are good suggestions. It's always  
18 been the intent of this Board and one of the reasons we  
19 held the permit hearings in September, was to put people  
20 on notice that there are issues. And if you recall at the  
21 conclusion of those hearings, we said you guys need to get  
22 with staff and you need to resolve these things, otherwise  
23 there are going to be -- the Board is going to take  
24 action.

25 And you folks in San Joaquin county, some of the

1 folks are responding to that finally, but it is taking too  
2 long. So I appreciate your comments.

3 Mr. Shapiro.

4 MR. SHAPIRO: Good afternoon, President Carter  
5 members of the Board. Scott Shapiro, general counsel for  
6 the California Central Valley Flood Control Association.

7 Just two brief comments. One is to commend the  
8 Board on its effort to have this workshop and determine a  
9 common and understandable process for enforcement.

10 The association firmly believes that there is a  
11 role for enforcement in our system. As DWR and the Corps  
12 in their inspections have become more and more vigilant in  
13 enforcing standards that have been on the books but maybe  
14 ignored for many years, as well as new standards that come  
15 down, we recognize, the local maintaining agencies  
16 recognize, the need for an enforcement role.

17 And so we're appreciative of this effort, and  
18 we're very encouraging of the Board where enforcement is  
19 the appropriate step to take that step.

20 Final comment, partially in response to Curt's  
21 point, while the local agencies certainly want compliance  
22 as the ultimate goal, we do have a feeling that you need  
23 to have some Enforcement Actions, and you need to have  
24 some that can move a little faster and be a little bit  
25 more finality in issuing an enforcement order.



1           Because at the end of the day, it is the fear of  
2 enforcement, quite often, that is the best motivation for  
3 compliance. And so we understand the reticence of the  
4 Board and the individuals who make up the Board in making  
5 homeowners property owners come before you, go through an  
6 expensive process, and telling them that they're not  
7 entitled to those rights that they have perceived as  
8 property rights for many years.

9           But at the end, we have a better and a bigger  
10 common good, and that is a flood control system that  
11 projects hundreds of thousands of people, and we need to  
12 have that system properly enforced.

13           And so while it's difficult, we encourage the  
14 Board to continue to proceed with enforcement hearings and  
15 get a few under your belt and hopefully that will motivate  
16 more compliance and more cooperation.

17           Thank you.

18           PRESIDENT CARTER: Thank you.

19           Ms. Nagy.

20           MS. NAGY: Meegan Nagy, Army Corps of Engineers.  
21 Thank you, President Carter and members of the Board.

22           As you're aware, the Army Corps of Engineers is  
23 very concerned about unauthorized encroachments within the  
24 flood protection system. I'm really hopeful that this  
25 hearing that you've had today will help bring a lot of

1 those pending Enforcement Actions to a conclusion.

2 As you know, we have been conducting periodic  
3 inspections on various parts of the flood control system  
4 over the past several months, and we've identified  
5 numerous encroachments that we believe will adversely  
6 affect the functioning of the flood control project.

7 You know, I've been concerned about the length of  
8 time that it would take to bring these Enforcement Actions  
9 to a close, and I'm hopeful that the discussion today will  
10 help make that process go smoother.

11 I'm really hopeful the Board has the ability to  
12 act quickly, especially in those cases where there's  
13 really an imminent risk to public safety. We are getting  
14 consistent feedback from local maintaining agencies  
15 related to those periodic inspections that they lack the  
16 authority to do much of anything about the encroachments,  
17 whether that means they're unauthorized or they're just  
18 not being maintained in accordance with their permit  
19 conditions.

20 And we're looking to your leadership to help  
21 rectify those situations and make our flood control system  
22 act in the way it was intended and be safer for everybody.  
23 So I'm hopeful that this will help in that process.

24 Thank you.

25 PRESIDENT CARTER: Thank you. Anybody else have

1 any other comments they'd like to share?

2 SECRETARY HODGKINS: Has the Board discussed at  
3 all the situation where it's a permitted encroachment and  
4 whether the process deviates at all?

5 PRESIDENT CARTER: Not the entire Board, I guess.  
6 I the smaller group has had that discussion on a number of  
7 occasions. And there are -- whether or not it's a -- I  
8 guess the perspective of and the consensus of the team  
9 that pulled this together is that the non-permitted  
10 encroachments are much more straightforward than the  
11 encroachments that have permission from this Board or have  
12 been granted permission from this board in the past. The  
13 general feeling is that the process is the same with  
14 respect to moving through the process.

15 There are -- there's greater concern with respect  
16 to the potential property rights issues when the Board has  
17 granted permission. And that is one of the reasons why  
18 there was an additional -- this Paragraph E, additional  
19 procedures with respect to if the respondent believes that  
20 additional procedures or regulations apply to their  
21 particular proceeding, the respondent may request that  
22 such additional proceedings be incorporated.

23 And that it's incumbent upon them to advise the  
24 Board if they wish to have any of that additional  
25 consideration or additional procedures.

1           So essentially, that's intended to put them on  
2 notice. And that's kind of where we ended up.

3           LEGAL COUNSEL SMITH: And just briefly, from a  
4 legal standpoint, there are no regulations that  
5 specifically address the situation where you have a permit  
6 versus you don't have a permit.

7           So there isn't a specific procedure for that  
8 situation. It would either fall under the current  
9 procedure that's there or it would just be general  
10 principles of due process that would apply, which are  
11 basically, if you have a property right that's being  
12 affected, you have a right to notice and a right to be  
13 heard and then the APA supplements that with you have a  
14 right to rebut evidence against you.

15           So it would -- there's no specific procedure in  
16 the regulations that addresses that situation, but there  
17 are principles of due process that we can pull from. We  
18 do have a process. And the Title 23 process, for example,  
19 addresses revocation. That's one of the things that the  
20 Board has available to it as an order through an  
21 enforcement proceeding, if appropriate.

22           PRESIDENT CARTER: There is a -- this is a -- the  
23 permitted encroachments are of great concern to, I think,  
24 all of us here on the Board. And actually Ms. Suarez  
25 brought up a section of the code Article 6, Section 108

1    whereas although it's not directly applicable in this  
2    particular situation, it may serve to inform the Board's  
3    consideration of the enforcement moving forward.

4           And -- so that's something that the Board might  
5    look into the context of that, in terms of considering  
6    what action or what enforcement proceeding they might  
7    choose. That we might choose.

8           So again it's -- there are elements of the  
9    regulations, although not directly applicable, are  
10   similar, and so serve to perhaps provide some guidance.

11           BOARD MEMBER BROWN: Mr. Chairman.

12           PRESIDENT CARTER: Yes, sir.

13           BOARD MEMBER BROWN: The grandfather clause is  
14   one that we struggled with last time. And I know there  
15   was some testimony, or at least discussion presented, on  
16   behalf of whose responsibility, financially  
17   responsibility, that might fall onto, whether it be the  
18   landowner or possibly the State or this Board.

19           I wonder if we could have that issue looked into  
20   to see if there is funding, if it can be determined  
21   legally or morally, that it's the State responsibility  
22   that we check with either the Legislature or with the  
23   Department to see if there's funding there to address  
24   those issues, partial or in whole.

25           PRESIDENT CARTER: And a consideration like this

1 may be something that can be incorporated in the  
2 regulations rewrite that we're going through right now.

3 BOARD MEMBER BROWN: Yes.

4 PRESIDENT CARTER: At some point.

5 SECRETARY HODGKINS: Good.

6 PRESIDENT CARTER: So there is an opportunity  
7 perhaps to provide some more clarity with respect to  
8 permitted encroachments and enforcements.

9 BOARD MEMBER BROWN: In fact, I think I'd like to  
10 make that a motion on the Board to see if the Board is in  
11 concurrence or has some better ideas.

12 And to that extent, I'll move that we ask staff  
13 to go ahead and look into that possible responsibility  
14 legally, and then see if there's sources of funding that  
15 could be addressed.

16 PRESIDENT CARTER: Okay.

17 BOARD MEMBER BROWN: With your permission, if you  
18 think that's appropriate to do it that way.

19 PRESIDENT CARTER: We can do that. I think it's  
20 appropriately agendized for today, so we can do that, if  
21 there's a second?

22 BOARD MEMBER SUAREZ: I'll second.

23 PRESIDENT CARTER: We have a second.

24 Any discussion on the motion?

25 SECRETARY HODGKINS: Restate the motion.

1           BOARD MEMBER BROWN: In the meeting that we had  
2 prior -- or somewhere prior anyway, there was debate as to  
3 the responsibility of permitted encroachments, that our  
4 prior Board had made. And there was some thought that it  
5 really should not be the responsibility of the landowner,  
6 if indeed it was permitted and the landowner moved ahead  
7 accordingly.

8           So it begs the question then whose financial  
9 responsibility might it be, either legally or morally to  
10 remove the encroachment. And if it is by chance the  
11 State's responsibility, then is there funding that might  
12 be available to assist in those endeavors?

13           And that may mean checking with the Department.  
14 And it may mean checking with the Legislature to see if  
15 that's a possibility.

16           LEGAL COUNSEL SMITH: If I may comment briefly.  
17 On the legal aspect of that, it may not be something that  
18 can be answered in a general sense. It's probably a very  
19 fact specific type of question from a legal standpoint.  
20 You might be able to look into the general question if  
21 there's funding to pay to remove previously permitted  
22 encroachments. I don't know. Staff might have to answer  
23 how they would go about doing that.

24           But my sense is that, from a legal standpoint,  
25 typically it would be a very fact-specific inquiry.

1           BOARD MEMBER SUAREZ:   Maybe we could just kind of  
2 put the idea on the table and then all these side  
3 discussions can occur on the side, because I have some  
4 ideas, but why go through it here.

5           PRESIDENT CARTER:   Okay, any other questions?

6           EXECUTIVE OFFICER PUNIA:   Ben, a general question  
7 that with this discussion already taking place is staff --  
8 is it okay for staff to bring new enforcement hearings for  
9 the Board in the future Board meetings?

10          PRESIDENT CARTER:   I think sometime in the future  
11 we will be doing enforcement hearings.

12          EXECUTIVE OFFICER PUNIA:   I thin staff is ready  
13 for bringing the Garden Highway and some of the Bear  
14 Creek. I'm assuming it's all right to bring it back to  
15 the Board.

16          PRESIDENT CARTER:   We'll --

17          BOARD MEMBER SUAREZ:   We'll have --

18          PRESIDENT CARTER:   We'll have that discussion  
19 when we talk about future our agenda.

20          BOARD MEMBER RIE:   President Carter, based on the  
21 discussion today -- will we be adding anything to this  
22 informational document?

23          PRESIDENT CARTER:   Do you have any specific  
24 suggestions?

25          BOARD MEMBER RIE:   Well, I would suggest that we



1 put something in there about when the appropriate time is  
2 to present evidence, and when is it an appropriate time to  
3 argue, and when, in fact, the hearing is closed, and when  
4 it can be reopened.

5 LEGAL COUNSEL SMITH: I think the problem with  
6 adding -- when I drafted this, I was very careful to not  
7 draft anything that could be considered an underground  
8 regulation. So in doing so, you can only really summarize  
9 what's already there. You can't add anything that isn't  
10 already there by regulation.

11 So to get the specificity that you're looking  
12 for, I don't know that we could do it without creating  
13 something underground regulations.

14 BOARD MEMBER RIE: Well, what about any  
15 references to the Administrative Procedures Act.

16 LEGAL COUNSEL SMITH: And again, the APA is not  
17 specific on those issues either.

18 BOARD MEMBER SUAREZ: May I make a suggestion.  
19 One thing that we can do, kind of following up  
20 with what Mr. Tabor discussed. We can alert the public  
21 that it has been the practice of this Board to use a  
22 similar process that we use when adopting permits, when it  
23 comes to hearing, which is parties have an opportunity to  
24 present information, rebut, and things of that sort.

25 We certainly can't -- we cannot say this is how

1 we only do it, but we certainly can inform the public this  
2 has been the practice in the past, and it's likely that,  
3 unless you feel uncomfortable with it, this is the  
4 practice -- this is the format that we will use.

5 So it's not mandatory, but at least gives people  
6 some sense of how we might go about with the hearing.

7 BOARD MEMBER RIE: Ms. Smith, is that something  
8 we can add, just some commentary about what the Board's  
9 past practice has been?

10 LEGAL COUNSEL SMITH: There's probably a way we  
11 could word that.

12 BOARD MEMBER RIE: Okay.

13 LEGAL COUNSEL SMITH: Just to note items that you  
14 were specifically concerned about.

15 BOARD MEMBER RIE: Yeah, because I think there's  
16 some confusion as to when you submit your evidence, when  
17 you're done submitting evidence, and especially when we  
18 have these, you know, multiple meeting dates, if we have  
19 to continue something three times, you know, it gets  
20 really confusing. Can you bring up something new at the  
21 third hearing? I just think we need to clarify that it's  
22 the practice to have this sort of order, in terms of  
23 presentations.

24 However you can do that without making it an  
25 underground regulation, I think will be helpful for anyone

1 who is in that situation, so that they can prepare  
2 appropriately.

3 BOARD MEMBER BROWN: Mr. Chairman.

4 PRESIDENT CARTER: Mr. Brown.

5 BOARD MEMBER BROWN: Mr. Tabor could help us  
6 here, but I think it would be helpful for the hearing  
7 officer and for the parties to give the process of the  
8 hearing and how it will take place and unfold.

9 The staff would have the opportunity to put on  
10 direct. And then the opposing party would have rebuttal  
11 on that direct. And then the opposing party would have  
12 the opportunity for their direct. And then our staff  
13 would have the opportunity for rebuttal of their direct.

14 And then the first party, the defendant, would  
15 have a chance for a redirect to bring on additional  
16 evidence at that time. And then our staff would have the  
17 chance to give rebuttal only on that additional evidence.  
18 Do you see the difference?

19 BOARD MEMBER RIE: That sounds good.

20 BOARD MEMBER BROWN: And then vice versa with the  
21 other party.

22 Ward, is there anything you can add to that?

23 DWR ASSISTANT CHIEF COUNSEL TABOR: Well, I just  
24 wanted to mention that the write-up does specifically say  
25 under the hearing procedure that the respondent has the

1 opportunity to both present and to rebut evidence.

2           What is missing that could be amplified on is in  
3 the Section D on the Board decision, that you could make  
4 clear that you're not going to allow new evidence, but you  
5 will allow argument. You can think of a better word than  
6 argument, that's fine. You will allow argument at that  
7 second meeting, but no new evidence. So I think that  
8 would be helpful.

9           And I think Mr. Brown's point is a good one, you  
10 know, whatever approach we intend to use, whether it's the  
11 approach that you use in your standard permit proceeding  
12 or in a modified Water Board proceeding -- my concern  
13 about adopting the Water Board proceeding too much is that  
14 once again, we're inventing new procedure that's not  
15 currently covered.

16           Now, your current hearing process isn't  
17 specifically covered by regulation either, but there is a  
18 strong administrative history behind the way you use it.  
19 And I think it would be useful to add perhaps another  
20 paragraph in here, like we did before the Ross proceeding,  
21 that we handed to Mr. Ross and his attorney well before  
22 the hearing, so that they knew how the hearing was going  
23 to transpire, what the agenda was, if you will, for the  
24 actual hearing.

25           I think that would be a useful thing.

1 BOARD MEMBER RIE: That was very helpful.

2 DWR ASSISTANT CHIEF COUNSEL TABOR: So I think  
3 Ms. Smith was trying to stick to the letter of your  
4 regulations when she did this, and try not to add in new  
5 things. But you know, obviously, the purpose is to have a  
6 clear common understanding for everybody as to how the  
7 proceeding will transpire.

8 PRESIDENT CARTER: So ladies and gentlemen, what  
9 I would propose then, trying to wrap this up, is that we  
10 take your comments, we go back, we make another pass at  
11 this, and revisit it next meeting just for clarification  
12 again. I don't want to prolong the process and prolong  
13 the beginning of hearing some of these, but I think it's  
14 very, very important that we know and we have a common  
15 understanding of where we're headed before we launch  
16 another one of these.

17 So with your concurrence, that's the way we'll  
18 proceed, and we've got to end this discussion right now  
19 really, and we'll revisit it next month.

20 Is everyone okay with that?

21 BOARD MEMBER BROWN: Yeah. You still have a  
22 motion on the floor though.

23 PRESIDENT CARTER: I apologize.

24 Ms. Smith, Mr. Fua, are you okay with that?  
25 We're going to make another pass at this, and we'll get

1 the -- and then we will meet again as a group with Ms.  
2 Suarez, Mr. Tabor, and have another discussion to try and  
3 refine this a little more and then bring it back to the  
4 Board next month.

5 So the motion before the Board with a second is  
6 to direct staff to investigate the possibility of the  
7 State accepting responsibility for removing some of these  
8 permitted encroachments, including funding.

9 BOARD MEMBER BROWN: One small correction. If  
10 the State has responsibility, any responsibility instead  
11 of accepting.

12 PRESIDENT CARTER: Okay.

13 BOARD MEMBER BROWN: I don't know that we have  
14 any responsibility, but if we do, we should recognize it.

15 BOARD MEMBER RIE: So you would like the staff to  
16 investigate whether there's a possibility of that.

17 BOARD MEMBER BROWN: If the State has any  
18 responsibility, morally or otherwise, legally.

19 BOARD MEMBER RIE: Okay.

20 BOARD MEMBER BROWN: And then if we do, then what  
21 sources of funding might be available to address those  
22 responsibilities.

23 BOARD MEMBER RIE: Okay.

24 SECRETARY HODGKINS: I heard Ms. Smith say she's  
25 not sure that question is answerable.

1           BOARD MEMBER BROWN: I know, but we wanted it  
2 investigated to see if it is.

3           SECRETARY HODGKINS: Okay. But I wonder if it  
4 wouldn't make sense to consider asking the question from  
5 the standpoint of if the Board believes the State has a  
6 moral obligation to pay for this, is that legally  
7 defensible. So I'm assuming that the answer to whether or  
8 not we are supposed to pay for it legally is probably  
9 we're not going to get an answer.

10           If we ask the other question, which is can the  
11 Board make a decision that the State should pay, we'll  
12 probably get an answer to whether or not it's the State's  
13 legal obligation, if it's clear determinable, and  
14 otherwise it will be up to the Board.

15           Well, I don't hear anybody liking that approach,  
16 okay.

17           BOARD MEMBER RIE: I'm okay with moving forward  
18 with the investigation.

19           PRESIDENT CARTER: So if I can try and restate  
20 again, to direct staff to investigate if the State has any  
21 responsibility, morally or legally for removing permitted  
22 encroachments, including -- and if it does, then what the  
23 possibilities are for funding.

24           BOARD MEMBER BROWN: Well stated.

25           PRESIDENT CARTER: Okay, everybody understand?

1 Mr. Punia, would you call the roll, please.

2 EXECUTIVE OFFICER PUNIA: Board Member John  
3 Brown?

4 BOARD MEMBER BROWN: Aye.

5 EXECUTIVE OFFICER PUNIA: Board Member Emma  
6 Suarez?

7 BOARD MEMBER SUAREZ: Aye.

8 EXECUTIVE OFFICER PUNIA: Board Member Butch  
9 Hodgkins?

10 SECRETARY HODGKINS: Aye.

11 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

12 BOARD MEMBER RIE: Aye.

13 EXECUTIVE OFFICER PUNIA: Board President Ben  
14 Carter?

15 PRESIDENT CARTER: Aye.

16 Okay, so we'll move ahead. Thank you very much,  
17 ladies and gentlemen.

18 Moving on to requested actions.

19 Item 12, consideration of comments to be  
20 submitted by the Central Valley Flood Protection Board in  
21 connection with future State Water Resources Control Board  
22 actions on the San Joaquin River Restoration Program.

23 I'll turn that over to Mr. Hodgkins and Mr.  
24 Brown.

25 SECRETARY HODGKINS: You want to kick it off,



1 John.

2 BOARD MEMBER BROWN: Okay, Butch and I have had  
3 three meetings this month, August 5th, 18th, and 25th.  
4 The first meeting was with the Lower San Joaquin -- the  
5 Lower San Joaquin Levee --

6 EXECUTIVE OFFICER PUNIA: Yes, Lower San Joaquin  
7 Levee District.

8 BOARD MEMBER BROWN: Okay, with Reggie Hill and  
9 Mr. Hodgkins, myself, and several others. And we obtained  
10 several issues from Mr. Hill that he was concerned with,  
11 mainly dealing with the maintenance issues of maintaining  
12 the East Side and Coachella Bypass.

13 We had a meeting then, the follow-up meeting --  
14 that one was down at Modesto Irrigation District, and then  
15 a follow-up meeting here locally with DWR, Paula Landis,  
16 and Mr. Tabor and Dale Hutchinson and Butch and myself on  
17 these same issues. And we drafted a letter outlining the  
18 issues that the State Board might be interested in in  
19 considering the issuance of their annual permitting that  
20 they have, their permitting process to the Bureau of  
21 Reclamation for the 200,000, plus or minus, acre feet a  
22 year that they're anticipating flowing into the bypass.

23 And then we had a meeting yesterday with Mr. Tom  
24 Howard and Charles Hopkins of the State Water Resources  
25 Control Board going over those issues to see if the

1 passage of this information might be of assistance in  
2 their endeavors. And this was done, prompted by a  
3 telephone call, from Mr. Tom Howard to me wanting to know  
4 if our Board had concerns in this reissuance of their  
5 permit.

6 So on the items at hand that were discussed I'm  
7 going to leave up to Mr. Hodgkins to present those.

8 SECRETARY HODGKINS: Thank you, John. I think  
9 fundamentally the issues are pretty clear in the letter.  
10 But to summarize them, the Bureau and Lower San Joaquin  
11 Levee Maintenance District have had trouble coming to an  
12 agreement on reimbursing the maintenance district for the  
13 additional costs that they will incur as a result of the  
14 interim flows, which are now running down the Eastside  
15 Bypass.

16 And the reason they haven't been able to come to  
17 an agreement is fundamentally that the levee district is  
18 absolutely convinced that the Bureau is going to attempt  
19 to convert the flowage easements in the Eastside and  
20 Mariposa Bypasses into easements that the federal  
21 government will claim give them the right to create  
22 mitigation in those areas.

23 The levee district further believes that the  
24 property owners will sue on the basis of that being a  
25 taking of their property. And the levee district wants

1 the Bureau to agree to protect them against any costs that  
2 they might incur as a result of their being also named in  
3 a suit associated with that taking. And the Bureau has  
4 fundamentally said, we cannot indemnify you.

5 We have left this issue by giving the levee  
6 district some wording that Mr. Tabor developed that the  
7 Bureau has previously accepted, which omits the word  
8 "indemnify", but otherwise looks very similar to a  
9 standard provision, indemnifying and holding harmless the  
10 State from actions associated with that agreement.

11 The levee district will look at that language and  
12 decide whether or not they figure they can find a way to  
13 get the protection they feel they need out of that kind of  
14 an approach, all right.

15 But fundamentally, the communication between the  
16 Bureau and the levee district has sort of reached and  
17 impasse here, because of their inability to resolve this  
18 particular issue.

19 There are other issues that are of concern to the  
20 district and to this Board. And they relate to also the  
21 fact that there is an elevation difference between the  
22 Mariposa Bypass and the Eastside Bypass that causes water,  
23 if not otherwise controlled, to go all the way down the  
24 Eastside Bypass without coming into the Mariposa Bypass.

25 To date, the Bureau has said, the levee district

1 may operate the gates to make that water flow in whatever  
2 direction they want to. During the interim period, that  
3 probably is acceptable to the district although they  
4 didn't specifically say that.

5 But in the long term, if that matter isn't  
6 addressed technically, the district foresees a situation  
7 in which for flood control operations, they have no choice  
8 but to close their gates in the dirt water down the  
9 Mariposa Bypass, which is six feet higher than the  
10 Eastside Bypass, and in which case they will have backed  
11 water up the Eastside Bypass to a depth of about six feet  
12 for a distance of two to four miles, in effect precluding  
13 their normal maintenance procedures in that reach of the  
14 bypass as well as the rest of it that has the flows in it.

15 So the district just wants the Bureau to address  
16 it. The purpose of the letter is to put the State Board  
17 on notice about the concerns that the levee district and  
18 this Board. I mean, I think our concerns are the same as  
19 the levee district's concerns. I didn't hear anything in  
20 our meeting with them that I wouldn't think that this  
21 Board would be supportive of. And the whole purpose of  
22 this letter is simply to line those out to the State Board  
23 as an issue of concern to the Board as a whole.

24 The meeting yesterday was just John and I  
25 speaking out per our involvement in this issue in the

1 past. And so if this letter doesn't go, then the Board  
2 hasn't chosen to inform them.

3 The situation there is the Bureau has to go to  
4 the State Board to get a permit to redivert a new point of  
5 diversion on their water rights on the San Joaquin to  
6 accommodate this restoration.

7 They will be coming up in front of the Board next  
8 month for a one-year extension of the current temporary  
9 permit. And they're in the process now of preparing an  
10 environmental document, which will subsequently be used  
11 over the coming year to seek a permanent permit.

12 So this is an opportunity for this Board and the  
13 State Board to work together with DWR staff to try and  
14 make sure that the flood control issues get addressed as  
15 we proceed forward with what it is an important  
16 restoration project. I think both Mr. Brown and I think  
17 it would be appropriate for the Board to go on record as  
18 providing this information to the State Board.

19 BOARD MEMBER BROWN: Mr. Chairman.

20 PRESIDENT CARTER: Sir.

21 BOARD MEMBER BROWN: In summary, if I may, Mr.  
22 Hodgkins, there's several issues that are involved here.  
23 Most of them are pretty minor and can be addressed or  
24 worked out.

25 But there's two main issues that we zeroed in on

1 with the Water Board, or with the staff of the Water  
2 Board.

3 The maintenance issues is one, and the increasing  
4 cost that is being anticipated by Reggie and his people,  
5 that's one.

6 And the Bureau's got to get together with the  
7 Lower San Joaquin District in order to resolve how that  
8 maintenance cost is going to be shared, because when they  
9 start flooding some of those Eastside Bypass channels and  
10 such, and the water stays in the what four miles back  
11 because of the flooding situation and the heights of the  
12 diversion dams downstream and such, it increases the  
13 maintenance considerably.

14 All right, so that's one.

15 The second one, which Butch didn't really touch  
16 on, is the liability issue. The easements that we have  
17 are flood control easements, and, as you know, are very  
18 specifically for flood control. And those easements  
19 belong to growers along the Eastside Bypass.

20 So when you take those easements and start  
21 putting water in them creating habitat, particularly for  
22 endangered species habitat, then the use changes  
23 considerably. And they're fearful then, that if those  
24 easements are used for something other than flood control  
25 purposes, it could argued, then it could put the State in

1 a position of liability.

2 We don't know the extent that that might be for  
3 this Board or for DWR, or for the State Water Board. But  
4 nevertheless, we felt that it is important -- it is  
5 important for the Bureau of Reclamation to make peace with  
6 those landowners along those easements, if they intend to  
7 use those easements now for something other than what was  
8 specifically designated it being for. That's important to  
9 be included in.

10 And we have the opportunity -- Mr. Howard asked  
11 Mr. Hodgkins and I if there is some specific language that  
12 we think should or could be written into their permit  
13 process that could address those two major issues. So we  
14 have the opportunity to make a cut at that. And I would  
15 suggest Mr. Hodgkins, which was the main author of this  
16 letter that went out, which is a good letter -- or draft  
17 letter for your consideration, that we do that, and get  
18 that information over to Mr. Howard as quickly as possible  
19 for their consideration.

20 There was another issue that we brought forth  
21 amongst ourselves from the standpoint of integrated water  
22 resources. And that one was what happens to the growers  
23 downstream of Friant, when 200,000 acre feet is being  
24 diverted out of Friant Reservoir for other purposes than  
25 what it is traditionally, over the last 50 years, been

1 used for, and that's irrigation from Clovis all the way  
2 down to the Kern County line, particularly in an area  
3 that's having an overdrafted groundwater basin.

4           So when you siphon off another 200,000 acre feet  
5 for a different use, the concern that we have is what's  
6 going to happen to the groundwater basin, which is a  
7 California water resource issue.

8           I've got to tell you that going into that meeting  
9 I had a great concern on this. But after talking with  
10 Dale Hutchinson and their staff, particularly Paula  
11 Landis, that they have taken, I think, extraordinary steps  
12 to try to bring out substitute supplies to address those  
13 issues through the Central Valley project or the Kings  
14 River or maybe the Kaweah River or others, to try to make  
15 those people as whole as much as possible.

16           And when I walked away from that meeting, I was  
17 really impressed with particularly Ms. Paula Landis and  
18 Ms. Hutchinson, and the effort that they have put in in  
19 addressing that issue. So as far as I'm concerned, that  
20 is a none issue. And I'd like to see us then concentrate  
21 on the maintenance cost, for the Lower San Joaquin, and  
22 the liability issues in someway requesting or hoping that  
23 the Bureau can make piece with those landowners, such that  
24 we don't get dragged into some type of a legal discussion  
25 with the landowners ourselves.



1           PRESIDENT CARTER: Thank you.

2           Comments, questions?

3           BOARD MEMBER RIE: I move to approve the letter.

4           PRESIDENT CARTER: Okay, we have a motion to  
5 approve the letter. Any discussion or is there a second?

6           BOARD MEMBER BROWN: I'd like to, if you would  
7 like, Teri, to maybe authorize Mr. Hodgkins to write a  
8 paragraph of suggestions to Mr. Howard of what might be  
9 included on those two main issues in their permitting.

10          BOARD MEMBER RIE: Okay, I'll incorporate your  
11 suggestions into the motion.

12          PRESIDENT CARTER: Is there a second?

13          BOARD MEMBER SUAREZ: I second.

14          PRESIDENT CARTER: We have a motion and a second.  
15 Discussion?

16          BOARD MEMBER SUAREZ: Just a point of  
17 clarification then. Mr. Brown and Mr. Hodgkins, it is  
18 your belief then this type of communication would be  
19 welcomed by the State Water Resources Board as something  
20 they want to hear from us?

21          BOARD MEMBER BROWN: It was requested.

22          SECRETARY HODGKINS: Yeah.

23          BOARD MEMBER SUAREZ: Thank you.

24          BOARD MEMBER BROWN: And they were appreciative  
25 of the letter that Mr. Hodgkins drafted identifying the

1 broad picture, but the request from Mr. Howard was that  
2 maybe there was some wording that might be appropriate  
3 they could consider.

4 PRESIDENT CARTER: Okay. Any other questions,  
5 comments?

6 Mr. Punia, would you call the roll.

7 EXECUTIVE OFFICER PUNIA: Board Member Emma  
8 Suarez?

9 BOARD MEMBER SUAREZ: Aye.

10 EXECUTIVE OFFICER PUNIA: Board Member Butch  
11 Hodgkins?

12 SECRETARY HODGKINS: Aye.

13 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

14 BOARD MEMBER RIE: Aye.

15 EXECUTIVE OFFICER PUNIA: Board Member John  
16 Brown?

17 BOARD MEMBER BROWN: Aye.

18 EXECUTIVE OFFICER PUNIA: Board President Ben  
19 Carter?

20 PRESIDENT CARTER: Aye.

21 Motion carries unanimously.

22 I would like to personally thank Mr. Hodgkins and  
23 Mr. Brown for responding to the State Water Resources  
24 Control Board's request and their concerns and spending  
25 the extra time meeting with the Lower San Joaquin Levee

1 District folks from DWR and the State water Resources  
2 Control Board and trying to respond on a timely basis to  
3 this issue. It is important. So thank you both very,  
4 very much for the extra time you put on that. Appreciate  
5 it.

6 SECRETARY HODGKINS: Our pleasure.

7 PRESIDENT CARTER: Okay. Ladies and gentlemen,  
8 let's take a 10-minute recess, if you don't mind. And we  
9 will then continue with our agenda on Item 13A, the Folsom  
10 Dam Safety and Flood Management Reduction Supplemental  
11 EIR. So if you all can get prepared to do that, we'll be  
12 back here in 10 minutes.

13 (Thereupon a recess was taken.)

14 PRESIDENT CARTER: Ladies and gentlemen, if you'd  
15 please take your seats, we'll go ahead and continue with  
16 our meeting.

17 This is Item 13A, Folsom Dam Safety and Flood  
18 Management Reduction Supplemental EIR, to consider  
19 approval of Resolution number 10-32 to certify the  
20 Supplemental EA/EIR for the control structure, chute, and  
21 stilling basin work, adopt the findings, and approve the  
22 project refinements to the originally approved project.  
23 And some day we'd like to take a tour.

24 So, Mr. Langston.

25 (Thereupon an overhead presentation was

1           Presented as follows.)

2           MR. LANGSTON: Good afternoon, President Carter,  
3 ladies and gentlemen of the Board. I'm John Langston from  
4 the Flood Project Office. And today I'm acting as Board  
5 staff for Resolution 10-32 approval and certification of  
6 the Supplementary Environmental Assessment, Environmental  
7 Impact Statement for the Folsom Dam Joint Federal Project.

8                               --o0o--

9           MR. LANGSTON: This is a continuing multi-agency  
10 effort under the Central Valley Flood Protection Board,  
11 which approved the Folsom Dam modification project. And  
12 today, we have Sacramento District Corps of Engineers  
13 project manager Jason Magness. And we have Jane Rinck  
14 from the Sacramento District. She is the Environmental  
15 Manager. And we have today from SAFCA, the Project  
16 Manager, Pete Ghelfi.

17           The project is to design and construct the  
18 control structure, auxiliary spillway, and stilling basin  
19 at the Folsom Dam that meets federal, State, and local  
20 objectives for Folsom Dam. The joint federal project was  
21 authorized by Water Resources Development Act of 1999 and  
22 the State Water Code Section 12670.14.

23                               --o0o--

24           MR. LANGSTON: The final Folsom Dam safety and  
25 flood damage reduction Environmental Impact Statement,

1 Environmental Impact Report was issued in March 2007 by  
2 the Bureau of Reclamation. The Board certified the Final  
3 EIS/EIR by Resolution 07-03 in July of 2007.

4 --o0o--

5 MR. LANGSTON: Recent project design refinements  
6 have required additional environmental analysis and  
7 documentation. The design refinements that are evaluated  
8 in this supplemental EA/EIR include the construction of a  
9 control structure, installation of six Tainter gates --  
10 this is a feature of the control structure -- and the  
11 lining of the chute and stilling basin and exploratory  
12 geotechnical borings, which will be for the cofferdam and  
13 the approach channel.

14 --o0o--

15 MR. LANGSTON: I'm going to have our Senior  
16 Environmental Scientist from the Flood Projects Office,  
17 David Martasian, brief the Board on ongoing CEQA actions.  
18 So if we could have David.

19 DWR SENIOR ENVIRONMENTAL SCIENTIST MARTASIAN:

20 Good afternoon, President Carter, members of the  
21 Board, Board staff. My name is David Martasian. I'm  
22 Senior Environmental Scientist with the Flood Projects  
23 Office acting on behalf of the Board today.

24 As John said, the Supplemental Environmental  
25 Assessment has been out on the streets now from June 28th

1 to August 12th, 2010. And this is a Supplemental  
2 Environmental Assessment, Environmental Impact Report to  
3 the original document that the Board certified in July of  
4 2007.

5 The Supplemental EA/EIR was posted on the Board  
6 website on June 28th, and agency and public comment was  
7 solicited throughout the comment period. We also had it  
8 posted in the Sacramento Bee and at the county court  
9 houses of Sacramento county, El Dorado County and Placer  
10 county.

11 The responses to the document, public and agency  
12 responses, amounted to a single comment letter from the  
13 Sacramento Municipal Air Quality Management District.  
14 Most of the comments were fairly simple and not  
15 substantive in nature. But those comments have been  
16 addressed in the Final EA -- Supplemental EA/EIR that I  
17 believe there's at least three copies that were given to  
18 the Board just before we started up again.

19 Again, what I'm here today is to ask for the  
20 Board to certify the Supplemental EA/EIR and reapprove or  
21 approve the design refinements to the Folsom Dam Safety  
22 Flood Damage Reduction Project.

23 If I can go to the next slide here.

24 --o0o--

25 DWR SENIOR ENVIRONMENTAL SCIENTIST MARTASIAN:

1           There are a couple minor changes -- well, a  
2 couple minor changes that were made in the Board  
3 Resolution 10-32 that was received in the Board pack that  
4 was sen out last week. I'd like to direct your attention  
5 to the monitors to just point out where those changes  
6 occurred. In the original copy that was sent out last  
7 week, the changes are on page two.

8           On the last whereas, the Statement of Overriding  
9 Considerations has been removed.

10           On the third item under the "to be resolved",  
11 that entire item has been removed.

12           That, in summary, contained a description of the  
13 finding of overriding considerations and potential  
14 significant impacts that were unmitigated or unavoidable.

15           And the Item number 4 in the original Board  
16 packet, which in the new Board packet is now Item number 3  
17 under "to be resolved". Again, removal of the Statement  
18 of Overriding Considerations, and an addition of an  
19 adoption of the mitigation and monitoring plan. And I  
20 have a copy of the mitigation and monitoring plan here too  
21 that I can provide to the Board now if you would like.

22           Again, the Board has requested to certify this  
23 Supplemental Environmental Assessment, Environmental  
24 Impact Report as lead CEQA agency by approving Board  
25 Resolution 10-32, and to approve the design refinements

1 for the Folsom Dam Safety and Flood Damage Reduction Joint  
2 Federal project.

3 --o0o--

4 DWR SENIOR ENVIRONMENTAL SCIENTIST MARTASIAN:

5 And I'd be happy to answer any questions?

6 PRESIDENT CARTER: Are there any questions for  
7 Mr. Martasian.

8 BOARD MEMBER SUAREZ: Yes, just, Mr. President, a  
9 clarification. Do we have a copy of the Statement of  
10 Overriding Considerations?

11 DWR SENIOR ENVIRONMENTAL SCIENTIST MARTASIAN:

12 You do not have a Statement of Overriding  
13 Considerations, because you will not be adopting one.  
14 There was a mistake made on my part in the original  
15 resolution that went out. I thought we were going to  
16 include a Statement of Overriding Considerations, but  
17 however, we went back and we looked at the document and  
18 our thresholds of significance, and we do not exceed those  
19 thresholds of significance in the document. All items are  
20 mitigated to less than significant or mitigation fees will  
21 be paid. Therefore, we do not need a Statement of  
22 Overriding Considerations.

23 BOARD MEMBER SUAREZ: And could I ask counsel  
24 who's representing the Board on this matter if they concur  
25 with that conclusion.



1            SENIOR STAFF COUNSEL FINCH: Nancy Finch on  
2 behalf of the Board. The Legal Office, both I and Ward  
3 Tabor, have been working closely with David and Flood  
4 staff, and this is adequate. This is the appropriate way  
5 to handle this situation.

6            BOARD MEMBER SUAREZ: And you have not -- just  
7 one last question. You have not received any -- any other  
8 public comments that you received on this matter that  
9 address the issue of overriding considerations or not?

10           DWR SENIOR ENVIRONMENTAL SCIENTIST MARTASIAN:  
11           No, there were no comments on overriding  
12 considerations. The closest comment to any sort of  
13 significance was merely one from the Sacramento Municipal  
14 Air Quality Management District asking us to make a  
15 significance determination, which we had over -- there was  
16 an oversight on our part and we had not actually made a  
17 determination. We made the determination based on the  
18 criteria we had in the document, and that's what the air  
19 manage district was requesting.

20           BOARD MEMBER SUAREZ: Thank you.

21           PRESIDENT CARTER: Any other questions for Mr.  
22 Martasian?

23           Okay, so staff has requested that we approve  
24 Resolution 10-32 with their proposed changes, which  
25 essentially eliminate the reference to a Finding of

1 Overriding Considerations.

2 What's the pleasure of the Board?

3 BOARD MEMBER SUAREZ: Mr. President, I move that  
4 we adopt the recommendations of staff on this matter.

5 PRESIDENT CARTER: Okay, we have a motion to  
6 adopt Resolution 10-32. Is there a second?

7 SECRETARY HODGKINS: I'll second.

8 PRESIDENT CARTER: Okay. Any questions?

9 Okay. We have a motion to adopt 10-32.

10 Ms. Rie, for your edification, there is a  
11 modification, I don't know if you know, to the resolution.  
12 Are you aware of that?

13 BOARD MEMBER RIE: Yes, I received those during  
14 the break.

15 PRESIDENT CARTER: Okay. Very good. So there's  
16 a motion and a second to approve Resolution 10-32. If  
17 there's no further discussion, Mr. Punia would you call  
18 the roll.

19 EXECUTIVE OFFICER PUNIA: Board Member Emma  
20 Suarez?

21 BOARD MEMBER SUAREZ: Aye.

22 EXECUTIVE OFFICER PUNIA: Board Member Butch  
23 Hodgkins?

24 SECRETARY HODGKINS: Aye.

25 EXECUTIVE OFFICER PUNIA: Board Member Teri Rie?

1 BOARD MEMBER RIE: Aye.

2 EXECUTIVE OFFICER PUNIA: Board Member John  
3 Brown?

4 BOARD MEMBER BROWN: Aye.

5 EXECUTIVE OFFICER PUNIA: Board President Ben  
6 Carter?

7 PRESIDENT CARTER: Aye.

8 Motion carries unanimously. Thank you very much,  
9 gentlemen.

10 DWR SENIOR ENVIRONMENTAL SCIENTIST MARTASIAN:  
11 Thank you.

12 MR. LANGSTON: Thank you.

13 PRESIDENT CARTER: Moving on to Item 13B. This  
14 is the American River Common Features Post Authorization  
15 Change Letter of Intent. Consider approval of Resolution  
16 10-35 that would approve a Letter of Intent from the  
17 Central Valley Flood Protection Board to the U.S. Army  
18 Corps of Engineers to serve as the non-federal sponsor for  
19 the improvements described in the Post Authorization  
20 Change Report and interim General Reevaluation Report for  
21 the American River Watershed Common Features Project in  
22 the Natomas Basin, Sacramento and Sutter counties.

23 (Thereupon an overhead presentation was  
24 Presented as follows.)

25 PRESIDENT CARTER: Is it Aja Ali?

1 DWR STAFF ENGINEER ALI: Ajala Ali.

2 PRESIDENT CARTER: Ajala Ali. Good afternoon,  
3 welcome.

4 DWR STAFF ENGINEER ALI: Good afternoon,  
5 President Carter and distinguished members of the Board.  
6 As I said before, my name is Ajala Ali and I'm an engineer  
7 with the Flood Protects Office, working on behalf of the  
8 Board on the American River Common Features Post  
9 Authorization Change Report.

10 I will be presenting the Letter of Intent to be  
11 sent from the Board to the United States Army Corps of  
12 Engineers.

13 --o0o--

14 DWR STAFF ENGINEER ALI: Board staff is  
15 recommending that the Board direct the Executive Officer  
16 to send a Letter of Intent to serve as the, A, non-federal  
17 sponsor of the project described within the Post  
18 Authorization Change Report.

19 --o0o--

20 DWR STAFF ENGINEER ALI: A brief summary of the  
21 PACR and Board and State sponsored projects related to the  
22 PACR. The American River Common Features Project was  
23 authorized through the Water Resources Development Act of  
24 1996. Additional features to the project were added  
25 through the Water Resources Development Act of 1999.

1           The authorization contains levee improvements to  
2 the American River, Sacramento River, sections of the  
3 Natomas Basin along with Folsom Dam modifications.  
4 Approximately 200 million has been spent towards American  
5 River -- the American River sections of the Common  
6 Features Project.

7                               --o0o--

8           DWR STAFF ENGINEER ALI: The Natomas Levee  
9 Improvement Project was initiated due to critical levee  
10 infrastructure issues within the Natomas area. The State  
11 and SAFCA initiated NLIP to address flood risk management  
12 needed within the area. NLIP consists of nearly 18 miles  
13 a levee strengthening and raises. The project features in  
14 NLIP are also considered within the PACR, and the  
15 recommended plan by the Corps, and maybe and are  
16 anticipated to be eligible for federal credit under the  
17 authorization. The estimated cost of NLIP is 350 million.

18                              --o0o--

19          DWR STAFF ENGINEER ALI: The Post Authorization  
20 Change Report is an interim General Reevaluation Report of  
21 the authorized project. The study was initiated  
22 specifically to address the Corps' interest and additional  
23 flood risk management features to the Natomas Basin  
24 section or portion of the Common Features Project.

25          Federal authorization of the PACR will authorize

1 additional flood risk management to the authorizations  
2 previously made through WRDA '96 and '99.

3 Alternative plans included within the PACR are  
4 levee raises and strengthening, adjacent levee structures  
5 and fix-in-place improvements.

6 --o0o--

7 DWR STAFF ENGINEER ALI: The recommended plan  
8 within the PACR includes levee strengthening along with  
9 42-mile perimeter of the Natomas Basin. The Corps has  
10 deferred recommendation for any federal interests in levee  
11 raises to the General Reevaluation Report.

12 The features included within levee strengthening  
13 of the recommended plan are also anticipated to be  
14 authorized for federal credit towards the NLIP portion  
15 completed. The Corps' anticipated first costs is in  
16 excess of 709 million.

17 --o0o--

18 DWR STAFF ENGINEER ALI: SAFCA recently passed  
19 Resolution 2010-100 in support of the project described  
20 within the Post Authorization Change Report. I have here  
21 with me David McDaniel from the Corps and Richard Johnson  
22 representing SAFCA if you guys have any further questions  
23 from this presentation.

24 --o0o--

25 DWR STAFF ENGINEER ALI: I'd now like to turn to

1 the Board for any additional questions.

2 PRESIDENT CARTER: Questions for Mr. Ali.

3 SECRETARY HODGKINS: A brief question. How does  
4 a PACR get approved at the federal level? Does it go to  
5 Congress or is it approved internally by the Corps?

6 DWR STAFF ENGINEER ALI: No, it's approved  
7 through Congress. It's approved through a WRDA, so it's  
8 just like any other study, feasibility study, but it's a  
9 miniature study that's done to focus on a specific area of  
10 the project.

11 SECRETARY HODGKINS: Okay, and then the estimated  
12 cost was over 700 million. Does that mean the cost of the  
13 Natomas Levee Improvement Project is going up again? The  
14 last cost I heard on NIP was like 650, 660.

15 DWR STAFF ENGINEER ALI: Yes, the Corps is  
16 currently refining its estimate, so they expect to have a  
17 final cost before the August 31st submittal to their  
18 headquarters.

19 MR. JOHNSON: Rick Johnson, Deputy Executive  
20 Director for SAFCA. Butch, I think the numbers you're  
21 thinking of were our cost estimates. And I think one  
22 thing to remember, the Corps is kind of -- the estimates  
23 that SAFCA put together were based on what we're actually  
24 experiencing in the field. The Corps' purpose is a little  
25 bit different. They're asking a ceiling from Congress,

1 which they should not -- they can't exceed. And so they  
2 have to -- they put in a certain number of contingencies  
3 and they have certain requirements they need to put in  
4 there. So I think that is a real quick explanation of the  
5 difference there.

6 PRESIDENT CARTER: Any other questions of staff?

7 BOARD MEMBER SUAREZ: I have a quick one, Mr.  
8 President.

9 The staff report on page two states that the  
10 report will be completed on August 31st.

11 DWR STAFF ENGINEER ALI: Yes, it's anticipated to  
12 be completed -- yes, it will be completed by August 31st.

13 BOARD MEMBER SUAREZ: Yet, we're sending a letter  
14 saying that we support what this yet completed report  
15 states. So I just kind of want to verify that we know  
16 what the report says, and we're comfortable with what the  
17 report says, and that it's not going to change drastically  
18 from when the last time staff saw it.

19 DWR STAFF ENGINEER ALI: Understood. The letter  
20 is conditional, but the report is actually complete.  
21 There are portions of the report that need to be included.  
22 The comment review -- I mean, the review comment process  
23 for the EIS and EIR were just completed the 16th of  
24 August. So the Corps is currently composing the actual  
25 report to be submitted August 31st.



1           BOARD MEMBER SUAREZ:   So it's a Record of  
2 Decision that you're finalizing is that what it is?

3           DWR STAFF ENGINEER ALI:   The total complete  
4 report, the actual report will be completed.

5           BOARD MEMBER SUAREZ:   I guess my point is you're  
6 asking this Board to take action on a report that has not  
7 been completed or finalized.

8           MR. SCARBOROUGH:   David McDaniel would like to  
9 address.   I'm Bob Scarborough with the Department of Water  
10 Resources.

11           MR. McDANIEL:   The report that's being prepared  
12 is to send up to our Corps Headquarters to get what's  
13 called a Chief's Report, which is the Corps'  
14 recommendation to Congress to authorize the project.   That  
15 authorization can be done in a WRDA.   It can also be done  
16 through a couple of other legislative means, with an  
17 omnibus or an energy bill.

18           The report as well as the EIS was out for public  
19 comments for 45 since.   It's back on the 16th.   We've  
20 resolved all of the open comments and have actually  
21 finished the document.   It's being reproduced right now to  
22 be Express Mailed tomorrow.

23           What will come out of the Chief's Report is just  
24 the recommendation for approval.   So legislation will have  
25 to be passed to actually get the funding for it.

1 I don't know if that answers your question

2 BOARD MEMBER SUAREZ: Yes, it does. Thank you.

3 MR. McDANIEL: Any other questions on it?

4 PRESIDENT CARTER: Any other questions?

5 So staff's recommendation is to -- for the Board  
6 to approve resolution 10-35, to approve a Letter of Intent  
7 from the Central Valley Flood Protection Board to the  
8 Corps to serve as the non-federal sponsor for the  
9 improvements in the Post Authorization Change Report. And  
10 to authorize the Executive Officer to sign the letter and  
11 send it off.

12 BOARD MEMBER BROWN: Are you ready for a motion?

13 PRESIDENT CARTER: I am.

14 BOARD MEMBER BROWN: Mr. Chairman, I make a  
15 motion that you approve Resolution 10-35 and a Letter of  
16 Intent from the Central Valley Flood Protection Board to  
17 the Corps of Engineers to serve as the non-federal sponsor  
18 as proposed, and to delegate the Executive Officer the  
19 authority to sign the Letter of Intent.

20 PRESIDENT CARTER: Okay. Is there a second?

21 SECRETARY HODGKINS: Second.

22 PRESIDENT CARTER: Okay. Any discussion?

23 Mr. Punia, would you call the roll.

24 EXECUTIVE OFFICER PUNIA: Board Member Emma  
25 Suarez?

1 BOARD MEMBER SUAREZ: Aye.

2 EXECUTIVE OFFICER PUNIA: Board Member Butch  
3 Hodgkins?

4 SECRETARY HODGKINS: Aye.

5 EXECUTIVE OFFICER PUNIA: Board Member John  
6 Brown?

7 BOARD MEMBER BROWN: Aye.

8 EXECUTIVE OFFICER PUNIA: Board President Ben  
9 Carter?

10 PRESIDENT CARTER: Aye.

11 And for the record, Ms. Rie is absent.

12 DWR STAFF ENGINEER ALI: Thank you.

13 PRESIDENT CARTER: Thank you very much.

14 Okay. Ladies and gentlemen, we're moving on to  
15 Item 14, Informational Briefing. This is a briefing  
16 update on the Natomas Levee Improvement Program Phase 4a  
17 Project, including a response to the Board Special  
18 Condition number 76, which requires the Sacramento Area  
19 Flood Control Association to report back to the Board on  
20 the status of the land acquisition and the legal access  
21 for all parcels affected by the land acquisition.

22 Good after.

23 MR. JOHNSON: Good afternoon, Mr. President and  
24 members of the Board. Rick Johnson again Deputy Executive  
25 Director with SAFCA.

1           We've just been -- you just approved a Letter of  
2 Intent to serve as the non-federal sponsor for the Post  
3 Authorization Change Report that's going forward to seek  
4 federal authorization for participation by the Corps of  
5 Engineers in the Natomas Levee Improvement Project.

6           Because of the significance of that project, the  
7 State and SAFCA have gone forward with early  
8 implementation through construction of the project. One  
9 of the portions under construction is what -- SAFCA's  
10 Phase 3, which includes constructing about five miles of  
11 levees along the east bank of the Sacramento River.

12           That work was approved under Permit number  
13 18-159-4 approved at your April 23 Board Meeting. And it  
14 contains a Special Condition, number 76, which requires  
15 that SAFCA report back to the Board on detailing the  
16 status of our land acquisition process.

17           We submitted the first report June 15th and then  
18 recently submitted a letter with a detailed summary update  
19 on August 5th. By way of summary, we have purchased or  
20 are in the process of acquiring 64 parcels, 44 of which  
21 are private and 20 public. There's 25 owners, 20 private  
22 and five public, and there's three residential  
23 relocations, which are tenant occupants there.

24           SAFCA is working very diligently and hard trying  
25 to address the concerns and accommodate the owners and

1 tenants' needs. And we will continue to do so.

2 We wanted to take this opportunity to give the  
3 Board a chance to ask any detailed questions. I have Mr.  
4 John Bassett with me who can answer any questions in  
5 detail if you have any on our August 5th letter.

6 So just making it very quick here for you.

7 PRESIDENT CARTER: Any questions?

8 SECRETARY HODGKINS: Rick, do the property owners  
9 you're working with know you're here today?

10 MR. JOHNSON: We did not specifically notice  
11 them, but they were noticed -- I mean, they -- some of  
12 them are aware, but we did not make a specific  
13 notification as it was an information item for the Board,  
14 and the Board put it out for the notification.

15 SECRETARY HODGKINS: Okay. Thank you.

16 PRESIDENT CARTER: Any other questions?

17 BOARD MEMBER SUAREZ: I don't have a question,  
18 Mr. President. I just wanted to recognize that this is a  
19 very thorough document and it's very helpful, so I wanted  
20 to --

21 MR. JOHNSON: Thank you.

22 BOARD MEMBER SUAREZ: We didn't specify how we  
23 wanted the report back, but this works very well.

24 MR. JOHNSON: Okay, great. Thank you very much.

25 PRESIDENT CARTER: I appreciate this as well. I

1 did not receive it until today, so I have not had a chance  
2 to look through it yet.

3 MR. JOHNSON: If you have any questions, we're  
4 more than welcome to, you know, come back again another  
5 time and answer them or just off line too, so whichever  
6 works.

7 PRESIDENT CARTER: Okay. All right, I appreciate  
8 that. Thank you very much.

9 MR. JOHNSON: Thank you.

10 PRESIDENT CARTER: Okay. All right. We'll move  
11 on to Item 15, Board Comments and Task Leader Reports. We  
12 want to go down the table.

13 Mr. Brown, do you have anything you want to share  
14 with the Board and staff.

15 BOARD MEMBER BROWN: Nothing more than what I  
16 already have with the three meetings that Mr. Hodgkins and  
17 I attended this week. That covers the extra-curricular  
18 activities, Mr. Chairman.

19 PRESIDENT CARTER: Okay. Mr. Hodgkins.

20 SECRETARY HODGKINS: I think the only other thing  
21 I would mention is that I attended one of the Central  
22 Valley Flood Protection Planning program workshops, the  
23 one on environmental restoration. I thought it was  
24 reasonably well done. I did note and this -- I don't know  
25 what you do about this. It was mostly folks who are in

1 support of lots of environmental restoration. Although  
2 Mr. Bair was there as well.

3 And so we heard from the -- at least the view of  
4 one person who isn't necessarily crazy about planting  
5 stuff everywhere in the floodway. So it was a good  
6 session. And one where anybody could have participated.

7 PRESIDENT CARTER: Thank you.

8 Ms. Suarez.

9 BOARD MEMBER SUAREZ: Mr. President, I just  
10 wanted to alert the other Board members and, of course,  
11 yourself, that Mr. Fua and his team working on the Tier 2  
12 regulations has provided us with an update of milestones.  
13 I believe all Board members got this.

14 SUPERVISING ENGINEER FUA: Yes.

15 BOARD MEMBER SUAREZ: This provides an update on  
16 where we hope to be in the next year as we proceed with a  
17 more complicated, more detailed revisions of our  
18 regulations.

19 So this is for your information, and I appreciate  
20 staff putting this update together.

21 Again, the Tier 2 are the more technical  
22 revisions to our regulations, dealing with standards. We  
23 have a team, which includes consultants from DWR. And  
24 staff has been working also with the Corps of Engineers,  
25 so we can update our regulations in a manner that takes

1 into consideration what changes have occurred in Corps  
2 thinking on many issues, including vegetation, I believe  
3 we're going to try to address that, in any event. So this  
4 is more complicated. It will take more time, but this is  
5 the updated schedule.

6 On the Tier 1B, which again was the set of  
7 revisions that we were trying to work on quickly, after  
8 passage of 1165, it is the hope of our task force, which  
9 is composed of Mr. Hodgkins, myself, and the key staff, to  
10 have a proposed package for your consideration in  
11 September. Again, that would deal with cleaning up the ex  
12 parte communication portions of our regulations, based on  
13 changes under 1165, language dealing with limited  
14 delegation to our General Manager -- Executive Officer to  
15 approve certain permits, and enforcement language dealing  
16 with our new authorities and assist some clean-up  
17 language. And it is our hope that we should have that  
18 ready for this Board to consider.

19 And again the consideration is if it's approved  
20 by the Board, then the public process begins, that will be  
21 shepherded by Ms. Smith with the Office of Administrative  
22 Law. And that's the actual official public review  
23 process. So there will be plenty of opportunity for the  
24 public to provide input.

25 And next week I will be participating in the



1 Delta and San Joaquin Conservancy or Stewardship Council  
2 meeting, which I believe includes a field trip.

3 PRESIDENT CARTER: That's next week.

4 BOARD MEMBER SUAREZ: Yes, sir. Next Wednesday.

5 PRESIDENT CARTER: Thank you.

6 A couple things I wanted to share. I attended a  
7 meeting hosted by the San Joaquin County Flood Control and  
8 Water Conservation District, a briefing intended for  
9 general Rock Donahue, who's the Commander of the South  
10 Pacific Division. It was a two-day mating. I attended  
11 the second day, Tuesday. Actually, it was a one-day  
12 meeting, but it was a half a day on Monday and a half a  
13 day on Tuesday with a tour.

14 I also participated on a panel on that. They  
15 asked that I represent the Board on a levee discussion  
16 panel, which the theme of it was how can we design,  
17 improve, and better maintain project and nonproject levees  
18 for urban or urbanizing areas.

19 I thought it was a -- the meeting was very well  
20 done, and very well hosted and very well attended, and it  
21 was a good chance to check in with a number of the flood  
22 folks in the San Joaquin Valley, as well as, in  
23 particular, the Corps Division got a chance to chat for  
24 awhile with General Donahue.

25 And for those of you who may not know, he has --

1 is going to be changing his command. He will be off to  
2 Iraq in January to help with the transition of the U.S.  
3 troops moving out of Iraq. He said that he expects to be  
4 there until the U.S. forces have left the country. He  
5 does not know who his replacement is for the South Pacific  
6 Division command, but that will be -- that decision will  
7 be made by Headquarters sometime between now and January  
8 we hope.

9           So let's see, we had a discussion this morning  
10 about the Roundtable. I don't think there's a whole lot  
11 more to add there. Other than we are part of the  
12 transition to a new structure on the Roundtable is to  
13 reassess our facilitation needs and facilitator. Our  
14 contract with Dr. Reckmeyer essentially ends this fall.  
15 And this is -- it's an opportunistic time to reassess the  
16 skill sets that we need for facilitation as well as who we  
17 want to have on that.

18           There is a -- the Roundtable did form a steering  
19 committee to help with this transition. It's a slightly  
20 larger and broader representation than the Corps group  
21 that had been working on it up to the meeting on August  
22 19th. That Committee is comprised of Mr. Stein Buer,  
23 Alicia Kirchner who is the Director of Planning at the  
24 District with the Corps, Ed Hecker, James Dalton,  
25 Headquarters Corps folks, Howard Brown who is with the

1 National Marine Fisheries, NOAA Fisheries Service, Mike  
2 Inamine with DWR, myself. And then from Division Corps,  
3 would be Chris Altendorf, and Paul Robershotte. So a good  
4 representation.

5 We still have some fairly senior folks from each  
6 of the core arms of the Corps or tiers of the Corps. And  
7 they all seem fairly engaged. We have some resource  
8 representation. And Mr. Brown has been very engaged from  
9 a resources perspective. And he has agreed to work with  
10 both the federal resource agencies, Fish and Wildlife  
11 Service, as well as the State Fish and Game, in bringing  
12 their perspectives to this steering committee.

13 So we tentatively have a meeting of the steering  
14 committee scheduled some time in September, early October  
15 come to generate another revision of the proposed  
16 Roundtable architecture -- you can see I've got lots of  
17 notes on what we had proposed -- with a meeting of the  
18 full Roundtable in mid-November, at some point.

19 And then quarterly meetings subsequent of the  
20 full group, and a lot more active participation of  
21 subgroups in between those quarterly meetings.

22 Then I got a request from -- what's the -- I'm  
23 drawing a blank, I apologize.

24 (Laughter.)

25 EXECUTIVE OFFICER PUNIA: Trip to Washington?

1           PRESIDENT CARTER:  No, this is Ken --

2           EXECUTIVE OFFICER PUNIA:  Ken Kirby.

3           PRESIDENT CARTER:  Ken Kirby for Board  
4 participation in a meeting on the Delta Program's  
5 Coordination Forum.  And this is something that was  
6 outlined in a letter a year ago by Secretary Chrisman, in  
7 terms of this concept of the Bay-Delta Conservation Plan,  
8 the Delta Stewardship Council, as part of the  
9 implementation.

10           They have not set a date yet.  I told him that  
11 the Board would be represented.  The concept is, there  
12 are -- there are actually two kind of panel discussions.  
13 One is a kind of a senior staff level panel discussion  
14 that we're kind of discussing whether or not it's  
15 appropriate to have Board member representation on that,  
16 but certainly wants to have Board member representation on  
17 the senior kind of policy panel.  It will be hosted by the  
18 Director of Resources, Lester Snow.  It will have,  
19 hopefully, members of the -- a member of the Delta  
20 Stewardship Council, Central Valley Flood Protection  
21 Board, Senior Member of the Army Corps, somebody from the  
22 U.S. Bureau of Reclamation as well.

23           And so I told him that either myself or someone  
24 from the Board, perhaps Ms. Suarez might participate in  
25 this, since Ms. Suarez is kind of taking the lead on Delta

1 issues with the Board.

2 So, Emma, I need to coordinate with you on this.  
3 And I'll send you or I can give you this draft concept  
4 memo. Actually, I will give this to you right now because  
5 I have it. Then we need to just get together and discuss  
6 how we're going to cover this, what the best way is.

7 BOARD MEMBER SUAREZ: Okay.

8 PRESIDENT CARTER: I also am tentatively  
9 scheduled to go to Washington D.C. on a trip in  
10 conjunction with DWR. This is their legislative advocacy  
11 group that Ms. Lani Arena, Rod Mayer, and I don't know who  
12 else goes.

13 EXECUTIVE OFFICER PUNIA: Ward Tabor.

14 PRESIDENT CARTER: Mr. Tabor attends. And their  
15 agenda is to lobby the Legislature's on California flood  
16 programs. And my agenda is to, in particular, work with  
17 Corps headquarters leadership on some of the issues and  
18 the challenges that we have with them, in addition to  
19 supporting the promotion of flood projects for California.

20 So that's scheduled for October -- the week of  
21 October 21st, is it? Ward, do you recall?

22 DWR ASSISTANT CHIEF COUNSEL TABOR: I thought it  
23 was the second week of October.

24 PRESIDENT CARTER: Okay, you're probably right.

25 So I'm planning on trying to make that happen,

1 and work that into the rest of the schedule.

2 And the final thing is that I met with the  
3 appointment secretary, Mr. John Cruz to talk about  
4 transition, given this is an election year and whatnot,  
5 talk about transition with the Board. I went over with  
6 him the Roundtable and the process that we're undergoing  
7 there, and trying to get that architecture finalized and  
8 in place and working. I went through some of the  
9 regulation updates that we're doing, trying to get those  
10 changes incorporated and at least the public process of  
11 that launched by the end of the calendar year.

12 Also, trying to get an enforcement process in  
13 place, and at least tested once or twice prior to  
14 transitioning to a new Board next year. And then some of  
15 the challenges we're having with the Corps.

16 We also did talk about Board membership and the  
17 fact that Lady Bug has resigned. We're down to five. Our  
18 quorum by regulations is four, so we have a little bit  
19 more of a challenge now in terms of conducting business  
20 because we need four votes to take action. And so that  
21 means we can only have one dissenter on the Board.

22 I committed to Mr. Cruz that if to the extent  
23 that we are short members, and it begins to impact  
24 business, or our ability to conduct business, I would get  
25 in touch with him. He did indicate to me that until the

1 budget is approved, there will probably not be any action  
2 on new appointments to the Board. So we're stuck with  
3 ourselves for the time being, until further notice.

4 He was very appreciative. And I guess the  
5 greatest compliment was well, this is a really good  
6 update. I wish the Cabinet Secretary was here to hear all  
7 this as well.

8 So I think that's about -- that's about all I  
9 have on my business.

10 And I guess last meeting we mentioned that there  
11 is a National Committee on Levee Safety meeting coming up  
12 in October, I believe it is.

13 EXECUTIVE OFFICER PUNIA: That's correct.

14 PRESIDENT CARTER: We need to be sure that all  
15 the Board members are reminded of that, which is being  
16 held here in California. So I would encourage everyone to  
17 participate in that if they can, all the Board members.

18 BOARD MEMBER BROWN: When is it?

19 PRESIDENT CARTER: Jay, do you have the detailed  
20 information. I don't have the details with me.

21 EXECUTIVE OFFICER PUNIA: I will make sure that I  
22 send it again. I think it's sometime in October, but I  
23 don't have the exact date at this time.

24 BOARD MEMBER BROWN: Is it here in Sacramento?

25 EXECUTIVE OFFICER PUNIA: Yes, it's in

1 Sacramento.

2 PRESIDENT CARTER: Okay. Any questions?

3 Future Agenda.

4 We have a draft agenda that was in our packet  
5 this morning. The first page is boilerplate. We have a  
6 number of Consent items. There are four Hearings and  
7 Decisions on the draft agenda.

8 Let's see SAFCA, Friends of Tuolumne, Bobcat  
9 Flat, Department of Fish and Game, Merced River Ranch  
10 Restoration. Encroachment Removal Enforcement Hearing,  
11 Mr. Robert and Mrs. Carry on the Garden Highway. I would  
12 suggest that we postpone that, and instead have our policy  
13 discussion -- or continue our policy discussion on the  
14 enforcement process.

15 BOARD MEMBER BROWN: Can we include maybe  
16 liability on that too or the term that we have with  
17 Finance.

18 PRESIDENT CARTER: Okay, yes, we can --

19 BOARD MEMBER BROWN: Any progress on it.

20 PRESIDENT CARTER: Yeah, we'll at least give you  
21 an update on what we've done so far. We hopefully will  
22 have some information.

23 Policy discussion, Approval of Resolution 10-27  
24 to clarify approval process for applications to the Board  
25 that do not require -- okay, that's been something that



1 we've postponed at Teri's request for the last couple of  
2 meetings. We'll check with her and see if she wants to  
3 keep that on there.

4 We have the Title 23 Tier 1B revisions.

5 BOARD MEMBER SUAREZ: Yes, yes, yes.

6 SUPERVISING ENGINEER TARAS: We've got it as our  
7 goal. We'll do our best to get it to you. We'll have the  
8 document ready.

9 PRESIDENT CARTER: Consider approval of the Delta  
10 Levee Subventions Maintenance Program.

11 BOARD MEMBER SUAREZ: Mr. President, just real  
12 quick. At the minimum, we know that there's a portion of  
13 that Tier 1B package that's ready, and that's the portion  
14 on ex parte. So at the minimum, we'll have that too.

15 PRESIDENT CARTER: Okay.

16 BOARD MEMBER SUAREZ: But our goal is to have the  
17 other two pieces in place.

18 SUPERVISING ENGINEER TARAS: Staff concurs.

19 PRESIDENT CARTER: Good.

20 Sacramento River Evaluation Study. Got several  
21 board study agreements. Informational briefing. Flood  
22 risk notification program, Mr. Pineda. Let's see, what  
23 else came up today in my notes?

24 LEGAL COUNSEL SMITH: I have electing A  
25 Vice-President.

1           PRESIDENT CARTER: Electing a Vice-President is a  
2 good one.

3           SECRETARY HODGKINS: Also, a discussion of  
4 improving our working relationship with the Corps on the  
5 permits.

6           BOARD MEMBER BROWN: Progress on the Lower San  
7 Joaquin River Restoration, if there's any news from the  
8 State Water Board or others.

9           PRESIDENT CARTER: Okay. That might be -- unless  
10 there's something formal there, that could be included in  
11 the task reports as well.

12          BOARD MEMBER BROWN: Okay.

13          PRESIDENT CARTER: But kind of a policy  
14 discussion on the approach in terms of dedicating  
15 resources to the Board permits at the Corps.

16          BOARD MEMBER SUAREZ: Mr. President.

17          PRESIDENT CARTER: Yes, ma'am.

18          BOARD MEMBER SUAREZ: A couple of months ago we  
19 had an issue -- is it LD 10 or LD 1, now I can't  
20 remember -- that they -- LD 1, and I haven't seen that  
21 come back. I certainly don't want it to kind of --

22          SUPERVISING ENGINEER FUA: We plan to bring it  
23 back next month.

24          BOARD MEMBER SUAREZ: Okay, so that's one of the  
25 items.

1           SUPERVISING ENGINEER FUA: Yeah, it's not here,  
2 but it will be added.

3           BOARD MEMBER SUAREZ: Because there was an issue  
4 regarding environmental compliance.

5           SUPERVISING ENGINEER FUA: Yes.

6           BOARD MEMBER SUAREZ: Thank you.

7           PRESIDENT CARTER: Okay. Anything else?

8           EXECUTIVE OFFICER PUNIA: I think we have  
9 scheduled the September meeting a day and a half,  
10 September 22nd and 23rd, so I'm just seeking input from  
11 the Board.

12           PRESIDENT CARTER: Why would we do a thing like  
13 that.

14           (Laughter.)

15           EXECUTIVE OFFICER PUNIA: It's a pretty full  
16 agenda, and originally there was thought to go for a tour  
17 of the Folsom Dam too. If the Board has any desire, then  
18 we can schedule the tour the first day and the meeting the  
19 second day. I think the agenda may be a day and a half  
20 too.

21           PRESIDENT CARTER: Are we going to be able to do  
22 the tour of the Folsom Dam, given the Bureau's concerns  
23 about national security or --

24           EXECUTIVE OFFICER PUNIA: I think we talked --

25           PRESIDENT CARTER: -- Homeland security.

1 EXECUTIVE OFFICER PUNIA: Because our meetings  
2 are going to be open to the public, there may be some  
3 restriction that how close we can go, but they were  
4 definitely willing to entertain our request to accommodate  
5 us for the tour.

6 PRESIDENT CARTER: We just won't get to the see  
7 all the secret stuff.

8 EXECUTIVE OFFICER PUNIA: Yeah, they may keep us  
9 a little at a distance because of the Bagley-Keene and the  
10 public participation

11 PRESIDENT CARTER: Okay. How do people feel  
12 about a two-day meeting in September?

13 BOARD MEMBER BROWN: That's fine.

14 SECRETARY HODGKINS: It's okay with me.

15 PRESIDENT CARTER: Is anybody else in harvest?  
16 (Laughter.)

17 PRESIDENT CARTER: I guess not. Okay.

18 BOARD MEMBER SUAREZ: I guess I can subsidize the  
19 two-day meeting

20 SECRETARY HODGKINS: Or we could make it two and  
21 a half and come up and help you harvest for a half day.  
22 You think that would --

23 PRESIDENT CARTER: That might compensate.

24 SECRETARY HODGKINS: I doubt it.

25 PRESIDENT CARTER: Okay. All right. Well, let's

1 see how this agenda fleshes out. If we can do it in one  
2 day, we'll try to do it in one day. If it necessitates  
3 two, I would prefer to postpone a tour until November, if  
4 possible.

5 EXECUTIVE OFFICER PUNIA: Okay.

6 BOARD MEMBER SUAREZ: Yeah, when it's cold.

7 PRESIDENT CARTER: And rainy.

8 SECRETARY HODGKINS: It's never cold in the dam,  
9 if we get in there.

10 PRESIDENT CARTER: Okay, anything else to add?

11 SECRETARY HODGKINS: I wonder if we might on  
12 dedication of resources, if it would be reasonable if I  
13 promise to do it right away, to work with Teri in  
14 developing a little outline of the kinds of things we'd  
15 like staff and the Corps be prepared to address as we work  
16 through this, is that a fair thing? I'm happy to share it  
17 with everybody, but I don't know if that's --

18 BOARD MEMBER SUAREZ: That's a policy, you should  
19 be able to.

20 SECRETARY HODGKINS: Well, why don't we do that  
21 then.

22 PRESIDENT CARTER: Yeah, that's fine.

23 SECRETARY HODGKINS: Okay, I will.

24 PRESIDENT CARTER: There's no objection there, I  
25 don't think, is there?

1           SECRETARY HODGKINS: I don't think so. We're not  
2 taking any action.

3           Okay, great.

4           PRESIDENT CARTER: Good. Okay, very good. If  
5 there's -- is there anything else to do?

6           There isn't, except adjourn.

7           Mr. Punia.

8           EXECUTIVE OFFICER PUNIA: Tomorrow is a State  
9 furlough, and we are being asked to take another fully  
10 furlough by end of this month. So a lot of staff will be  
11 taking time off, one additional day than this Friday.  
12 Just for your information.

13           Thank you.

14           PRESIDENT CARTER: Okay. We're adjourned. Thank  
15 you very much.

16           (Thereupon the Central Valley Flood Protection  
17 Board meeting adjourned at 4:14 p.m.)

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CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California Central Valley Flood Protection Board meeting was reported in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, and thereafter transcribed under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of September, 2010.

---

JAMES F. PETERS, CSR, RPR  
Certified Shorthand Reporter  
License No. 10063